



515122

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/07/2010	.	
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The Committee on Commerce (Rich) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

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

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

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

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



515122

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

16           (2) A tax is imposed upon the transfer of property located  
17 in this state of every person who at the time of death is a  
18 nonresident. The tax is imposed only if the nonresident's state  
19 of domicile imposes an estate, inheritance, or other death tax  
20 on the transfer of a Florida resident's property located in that  
21 state and the amount of tax is in excess of the amount of such  
22 taxes which would be imposed by Florida on transfers of such  
23 nonresident's similar property located in Florida.

24           (3) The tax due under this section shall be equal to the  
25 tax that a nonresident would have to pay under the laws of his  
26 or her state of domicile if he or she were a Florida resident  
27 and the nonresident's property located in Florida were located  
28 in the nonresident's state of domicile and the nonresident's  
29 property located in the state of domicile were located in  
30 Florida.

31           (4) Notwithstanding any other provisions of this chapter,  
32 the tax imposed by this section is due and payable, and tax  
33 returns are due, on or before the last day prescribed by the  
34 laws of the nonresident's state of domicile for the payment of  
35 tax or the filing of returns.

36           Section 3. Effective upon this act becoming a law, section  
37 733.1051, Florida Statutes, is created to read:

38           733.1051 Limited judicial construction of will having  
39 federal tax provisions.—

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



515122

43 the terms of a will to define the respective shares or determine  
44 beneficiaries, in accordance with the intention of a testator,  
45 if a disposition occurs during the applicable period and the  
46 will contains a provision that:

47 (a) Includes a disposition formula referring to the terms  
48 "unified credit," "estate tax exemption," "applicable exemption  
49 amount," "applicable credit amount," "applicable exclusion  
50 amount," "generation-skipping transfer tax exemption," "GST  
51 exemption," "marital deduction," "maximum marital deduction,"  
52 "unlimited marital deduction," or "maximum charitable  
53 deduction";

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

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

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

62 (2) For purposes of this section:

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

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

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



515122

72 surrounding the creation of the will, and the testator's  
73 probable intent. In determining the testator's probable intent,  
74 the court may consider evidence relevant to the testator's  
75 intent even though the evidence contradicts an apparent plain  
76 meaning of the will.

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

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

84 1. Delay or refrain from making any distribution.

85 2. Incur and pay fees and costs reasonably necessary to  
86 determine its duties and obligations, including compliance with  
87 provisions of existing and reasonably anticipated future federal  
88 tax laws.

89 3. Establish and maintain reserves for the payment of these  
90 fees and costs and federal taxes.

91 (b) The personal representative is not liable for its  
92 actions as provided in this subsection made or taken in good  
93 faith.

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

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

100 Section 4. Except as otherwise expressly provided in this



515122

101 act and except for this section, which shall take effect upon  
102 this act becoming a law, this act shall take effect July 1,  
103 2010.

104  
105 ===== T I T L E A M E N D M E N T =====

106 And the title is amended as follows:

107 Delete everything before the enacting clause  
108 and insert:

109 A bill to be entitled  
110 An act relating to the estate tax; providing a short  
111 title; creating s. 198.46, F.S.; imposing a  
112 retaliatory tax on property of a nonresident decedent  
113 when the nonresident's state of domicile imposes  
114 inheritance, estate, or other death taxes on Florida  
115 residents; creating s. 733.1051, F.S.; authorizing a  
116 court to construe the terms of certain wills to define  
117 the respective shares or determine beneficiaries under  
118 certain circumstances; defining terms; providing for  
119 nonapplication to certain dispositions; authorizing a  
120 personal representative to take certain actions  
121 without court order pending a determination of estate  
122 distribution; limiting personal representative  
123 liability; preserving certain rights to construe a  
124 will; providing for retroactive operation; providing  
125 effective dates.