

1 A bill to be entitled
 2 An act relating to estates; amending s. 733.817, F.S.;
 3 revising and providing definitions; revising
 4 provisions for allocation of the estate tax,
 5 apportionment of the net tax attributable to specified
 6 interests, and requirements for determining how
 7 specific interests are passed for purposes of
 8 determination of net tax; providing retroactive
 9 applicability; providing an effective date.

10

11 Be It Enacted by the Legislature of the State of Florida:

12

13 Section 1. Section 733.817, Florida Statutes, is amended
 14 to read:

15 733.817 Apportionment of estate taxes.—

16 (1) DEFINITIONS.—For purposes of this section:

17 (a) "Fiduciary" means a person other than the personal
 18 representative in possession of property included in the measure
 19 of the tax who is liable to the applicable taxing authority for
 20 payment of the entire tax to the extent of the value of the
 21 property in possession.

22 (b) "Generation-skipping transfer tax" means the
 23 generation-skipping transfer tax on direct skips at death and
 24 excludes the generation-skipping transfer tax on taxable
 25 distributions or taxable terminations. The terms "direct skip,"
 26 "taxable distribution," and "taxable termination" have the same

27 meanings as provided in the Internal Revenue Code.

28 (c)~~(b)~~ "Governing instrument" means a will, trust
 29 agreement, or any other document that controls the transfer of
 30 property ~~an asset~~ on the occurrence of the event with respect to
 31 which the tax is being levied.

32 (d)~~(e)~~ "Gross estate" means the gross estate, as
 33 determined by the Internal Revenue Code with respect to the
 34 federal estate tax and the Florida estate tax, and as that
 35 concept is otherwise determined by the estate, inheritance, or
 36 death tax laws of the particular state, country, or political
 37 subdivision whose tax is being apportioned.

38 (e)~~(d)~~ "Included in the measure of the tax" means that for
 39 each separate tax that an interest may incur, only interests
 40 included in the measure of that particular tax are considered.
 41 The term "included in the measure of the tax" does not include:

42 1. Any interest, whether passing under the will or not, to
 43 the extent the interest is initially deductible from the gross
 44 estate, without regard to any subsequent reduction of the
 45 deduction by reason of the charge of any part of the applicable
 46 tax to the interest. If an election is required for
 47 deductibility, an interest is not "initially deductible" unless
 48 the election for deductibility is allowed. ~~The term "included in~~
 49 ~~the measure of the tax" does not include~~

50 2. Interests or amounts that are not included in the gross
 51 estate but are included in the amount upon which the applicable
 52 tax is computed, such as adjusted taxable gifts pursuant to s.

53 2001 of the Internal Revenue Code ~~with respect to the federal~~
 54 ~~estate tax. If an election is required for deductibility, an~~
 55 ~~interest is not "initially deductible" unless the election for~~
 56 ~~deductibility is allowed.~~

57 3. Gift taxes included in the gross estate pursuant to s.
 58 2035 of the Internal Revenue Code and the portion of any
 59 intervivos transfer included in the gross estate pursuant to s.
 60 529 of the Internal Revenue Code, notwithstanding inclusion in
 61 the federal gross estate.

62 (f)~~(e)~~ "Internal Revenue Code" means the Internal Revenue
 63 Code of 1986, as amended from time to time.

64 (g)~~(f)~~ "Net tax" means the net tax payable to the
 65 particular state, country, or political subdivision whose tax is
 66 being apportioned, after taking into account all credits against
 67 the applicable tax except as provided in this section. With
 68 respect to the federal estate tax, "net tax" is determined after
 69 taking into account all credits against the tax except for the
 70 credit for foreign death taxes and except for the credit or
 71 deduction for state tax taxes imposed by states other than
 72 Florida.

73 (h)~~(g)~~ "Nonresiduary devise" means any devise that is not
 74 a residuary devise.

75 (i)~~(h)~~ "Nonresiduary interest" in connection with a trust
 76 means any interest in a trust which is not a residuary interest.

77 (j)~~(i)~~ "Recipient" means, with respect to property or an
 78 interest in property included in the gross estate, an heir at

79 law in an intestate estate, devisee in a testate estate,
 80 beneficiary of a trust, beneficiary of a life ~~an~~ insurance
 81 policy, annuity, or other contractual right, surviving tenant,
 82 taker as a result of the exercise or in default of the exercise
 83 of a general power of appointment, person who receives or is to
 84 receive the property or an interest in the property, or person
 85 in possession of the property, other than a creditor.

86 (k) ~~(j)~~ "Residuary devise" has the meaning set forth in s.
 87 731.201.

88 (l) ~~(k)~~ "Residuary interest," in connection with a trust,
 89 means an interest in the assets of a trust which remain after
 90 provision for any distribution that is to be satisfied by
 91 reference to a specific property or type of property, fund, sum,
 92 or statutory amount.

93 (m) ~~(l)~~ "Revocable trust" means a trust as described in s.
 94 733.707(3).

95 (n) "Section 2044 interest" means an interest included in
 96 the measure of the tax by reason of s. 2044 of the Internal
 97 Revenue Code.

98 (o) ~~(m)~~ "State" means any state, territory, or possession
 99 of the United States, the District of Columbia, and the
 100 Commonwealth of Puerto Rico.

101 (p) ~~(n)~~ "Tax" means any estate tax, inheritance tax,
 102 generation-skipping ~~generation-skipping~~ transfer tax, or other
 103 tax levied or assessed under the laws of this or any other
 104 state, the United States, any other country, or any political

105 subdivision of the foregoing, as finally determined, which is
 106 imposed as a result of the death of the decedent, ~~including,~~
 107 ~~without limitation, the tax assessed pursuant to s. 4980A of the~~
 108 ~~Internal Revenue Code.~~ The term also includes any interest and
 109 penalties imposed in addition to the tax. Unless the context
 110 indicates otherwise, the term "tax" means each separate tax.
 111 However, the term "tax" does not include any additional estate
 112 tax imposed by s. 2032A(c) or s. 2057(f) of the Internal Revenue
 113 Code or any corresponding state estate, inheritance, or death
 114 tax. The additional estate tax shall be apportioned as provided
 115 in s. 2032A or s. 2057 of the Internal Revenue Code.

116 (q) ~~(e)~~ "Temporary interest" means an interest in income or
 117 an estate for a specific period of time or for life or for some
 118 other period controlled by reference to extrinsic events,
 119 whether or not in trust.

120 (r) ~~(p)~~ "Tentative Florida tax" with respect to any
 121 property means the net Florida estate tax that would have been
 122 attributable to that property if no tax were payable to any
 123 other state in respect of that property.

124 (s) ~~(q)~~ "Value" means the pecuniary worth of the interest
 125 involved as finally determined for purposes of the applicable
 126 tax after deducting any debt, expense, or other deduction
 127 chargeable to it for which a deduction was allowed in
 128 determining the amount of the applicable tax. A lien or other
 129 encumbrance is not regarded as chargeable to a particular
 130 interest to the extent that it will be paid from other

131 interests. The value of an interest shall not be reduced by
 132 reason of the charge against it of any part of the tax, except
 133 as provided in paragraph (3) (a).

134 (2) ALLOCATION OF TAX.—Except as otherwise effectively
 135 directed by the governing instrument, An interest in protected
 136 homestead shall be exempt from the apportionment of taxes.

137 ~~(3)~~ the net tax attributable to the interests included in
 138 the measure of each tax shall be determined by the proportion
 139 that the value of each interest included in the measure of the
 140 tax bears to the total value of all interests included in the
 141 measure of the tax. Notwithstanding the foregoing:

142 (a) The net tax attributable to Section 2044 interests
 143 ~~included in the measure of the tax by reason of s. 2044 of the~~
 144 ~~Internal Revenue Code~~ shall be determined in the manner provided
 145 for the federal estate tax in s. 2207A of the Internal Revenue
 146 Code, and the amount so determined shall be deducted from the
 147 tax to determine the net tax attributable to all other remaining
 148 interests included in the measure of the tax.

149 (b) The foreign tax credit allowed with respect to the
 150 federal estate tax shall be allocated among the recipients of
 151 interests finally charged with the payment of the foreign tax in
 152 reduction of any federal estate tax chargeable to the recipients
 153 of the foreign interests, whether or not any federal estate tax
 154 is attributable to the foreign interests. Any excess of the
 155 foreign tax credit shall be applied to reduce proportionately
 156 the net amount of federal estate tax chargeable to the remaining

157 recipients of the interests included in the measure of the
 158 federal estate tax.

159 (c) The reduction in the net tax attributable to the
 160 deduction for state death taxes allowed by s. 2058 of the
 161 Internal Revenue Code shall be allocated to the recipients of
 162 the interests that produced the deduction. For purposes of this
 163 paragraph, the reduction in the net tax shall be calculated in
 164 the manner provided for interests other than those described in
 165 paragraph (a).

166 (d)~~(e)~~ The reduction in the Florida tax, if one is
 167 imposed, on the estate of a Florida resident for tax paid to
 168 other states shall be allocated as follows:

169 1. If the net tax paid to another state is greater than or
 170 equal to the tentative Florida tax attributable to the property
 171 subject to tax in the other state, none of the Florida tax shall
 172 be attributable to that property.

173 2. If the net tax paid to another state is less than the
 174 tentative Florida tax attributable to the property subject to
 175 tax in the other state, the net Florida tax attributable to the
 176 property subject to tax in the other state shall be the excess
 177 of the amount of the tentative Florida tax attributable to the
 178 property over the net tax payable to the other state with
 179 respect to the property.

180 3. Any remaining net Florida tax shall be attributable to
 181 property included in the measure of the Florida tax exclusive of
 182 property subject to tax in other states.

183 4. The net federal tax attributable to the property
 184 subject to tax in the other state shall be determined as if it
 185 were located in that ~~the~~ state.

186 ~~(e)-(d)~~ The net tax attributable to a temporary interest,
 187 if any, shall be regarded as attributable to the principal that
 188 supports the temporary interest.

189 ~~(3)-(4)-(a)~~ APPORTIONMENT OF TAX.—Except as otherwise
 190 effectively directed by the governing instrument, the net tax
 191 attributable to each interest shall be apportioned as follows:

192 (a) Generation-skipping transfer tax.—Any federal or state
 193 generation-skipping transfer tax shall be apportioned in the
 194 manner provided in s. 2603 of the Internal Revenue Code after
 195 application of the remaining provisions of this subsection to
 196 taxes other than the generation-skipping transfer tax.

197 (b) Section 2044 interests.—The net tax attributable to
 198 Section 2044 interests shall be apportioned among the recipients
 199 of the Section 2044 interests in the proportion that the value
 200 of each Section 2044 interest bears to the total of all Section
 201 2044 interests. The net tax apportioned by this paragraph to
 202 Section 2044 interests that pass in the manner described in
 203 paragraph (c) or paragraph (d) shall be apportioned to the
 204 Section 2044 interests in the manner described in those
 205 subsections before the apportionment of the net tax attributable
 206 to the other interests passing as provided in those paragraphs.
 207 The net tax attributable to the interests other than the Section
 208 2044 interests that pass in the manner described in paragraph

209 (c) or paragraph (d) shall be apportioned only to the other
 210 interests pursuant to those subsections ~~if the Internal Revenue~~
 211 ~~Code, including, but not limited to, ss. 2032A(c) (5), 2206,~~
 212 ~~2207, 2207A, 2207B, and 2603, applies to apportion federal tax~~
 213 ~~against recipients of certain interests, all net taxes,~~
 214 ~~including taxes levied by the state attributable to each type of~~
 215 ~~interest, shall be apportioned against the recipients of all~~
 216 ~~interests of that type in the proportion that the value of each~~
 217 ~~interest of that type included in the measure of the tax bears~~
 218 ~~to the total of all interests of that type included in the~~
 219 ~~measure of the tax.~~

220 ~~(b) The provisions of this subsection do not affect~~
 221 ~~allocation of the reduction in the Florida tax as provided in~~
 222 ~~this section with respect to estates of Florida residents which~~
 223 ~~are also subject to tax in other states.~~

224 ~~(5) Except as provided above or as otherwise directed by~~
 225 ~~the governing instrument, the net tax attributable to each~~
 226 ~~interest shall be apportioned as follows:~~

227 (c)(a) Wills. ~~For property passing under the decedent's~~
 228 will, in the following order of priority:

229 1. The net tax attributable to nonresiduary devisees shall
 230 be charged to and paid from the residuary estate whether or not
 231 all interests in the residuary estate are included in the
 232 measure of the tax. If the residuary estate is insufficient to
 233 pay the net tax attributable to all nonresiduary devisees, the
 234 balance of the net tax attributable to nonresiduary devisees

235 shall be apportioned among the recipients of the nonresiduary
236 devises in the proportion that the value of each nonresiduary
237 devise included in the measure of the tax bears to the total of
238 all nonresiduary devises included in the measure of the tax.

239 2. The net tax attributable to residuary devises shall be
240 apportioned among the recipients of the residuary devises
241 included in the measure of tax in the proportion that the value
242 of each residuary devise included in the measure of the tax
243 bears to the total of all residuary devises included in the
244 measure of the tax. If the residuary estate is insufficient to
245 pay the net tax attributable to all residuary devises, the
246 balance of the net tax attributable to residuary devises shall
247 be apportioned among the recipients of the nonresiduary devises
248 in the proportion that the value of each nonresiduary devise
249 included in the measure of the tax bears to the total of all
250 nonresiduary devises included in the measure of the tax.

251 (d) ~~(b)~~ Trusts.—For property passing under the terms of any
252 trust other than a trust created in the decedent's will, in the
253 following order of priority:

254 1. The net tax attributable to nonresiduary interests of
255 the trust shall be charged to and paid from the residuary
256 portion of the trust, whether or not all interests in the
257 residuary portion are included in the measure of the tax. If the
258 residuary portion ~~of the trust~~ is insufficient to pay the net
259 tax attributable to all nonresiduary interests, the balance of
260 the net tax attributable to nonresiduary interests shall be

261 appportioned among the recipients of the nonresiduary interests
 262 in the proportion that the value of each nonresiduary interest
 263 included in the measure of the tax bears to the total of all
 264 nonresiduary interests included in the measure of the tax.

265 2. The net tax attributable to residuary interests of the
 266 trust shall be appportioned among the recipients of the residuary
 267 interests of the trust included in the measure of the tax in the
 268 proportion that the value of each residuary interest included in
 269 the measure of the tax bears to the total of all residuary
 270 interests of the trust included in the measure of the tax. If
 271 the residuary portion is insufficient to pay the net tax
 272 attributable to all residuary interests, the balance of the net
 273 tax attributable to residuary interests shall be appportioned
 274 among the recipients of the nonresiduary interests in the
 275 proportion that the value of each nonresiduary interest included
 276 in the measure of the tax bears to the total of all nonresiduary
 277 interests included in the measure of the tax.

278
 279 Except as provided in paragraph (g), this paragraph applies
 280 separately for each trust.

281 ~~(e)~~ Protected homestead, exempt property, and family
 282 allowance.-

283 1. The net tax attributable to an interest in protected
 284 homestead, exempt property, and the family allowance as
 285 determined under s. 732.403 shall be appportioned against the
 286 recipients of other interests in the estate or passing under any

287 revocable trust in the following order of priority:

288 ~~a.1.~~ Class I: Recipients of interests passing by intestacy
 289 ~~not disposed of by the decedent's will or revocable trust~~ that
 290 are included in the measure of the federal estate tax.

291 ~~b.2.~~ Class II: Recipients of residuary devises, and
 292 residuary interests, and pretermitted shares pursuant to ss.
 293 732.301 and 732.302 that are included in the measure of the
 294 federal estate tax.

295 ~~c.3.~~ Class III: Recipients of nonresiduary devises and
 296 nonresiduary interests that are included in the measure of the
 297 federal estate tax.

298 2. ~~Any~~ The net tax apportioned to a class, ~~if any,~~
 299 pursuant to this paragraph shall be apportioned among each
 300 recipient ~~the recipients~~ in the class in the proportion that the
 301 value of the interest of each bears to the total value of all
 302 interests included in that class. Tax may not be apportioned
 303 under this paragraph to the portion of any interest applied in
 304 satisfaction of the elective share whether or not included in
 305 the measure of the tax. For purposes of this paragraph, if the
 306 interests described in s. 732.2075(1) exceed the amount of the
 307 elective share, the elective share shall be treated as satisfied
 308 first from interests other than those described in classes I,
 309 II, and III and, to the extent those interests are insufficient
 310 to satisfy the elective share, from the interests passing to or
 311 for the benefit of the surviving spouse described in classes I,
 312 II, and III, beginning with those described in class I, until

313 the elective share is satisfied. This paragraph has priority
314 over paragraphs (a) and (h).

315 3. The balance of the net tax attributable to any interest
316 in protected homestead, exempt property, and the family
317 allowance as determined under s. 732.403 not apportioned under
318 this paragraph shall be apportioned to the recipients of those
319 interests included in the measure of the tax in the proportion
320 that the value of each bears to the total value of those
321 interests included in the measure of the tax.

322 (f) Construction.—For purposes of this subsection:

323 1. If the decedent's estate is the beneficiary of a life
324 insurance policy, annuity, or contractual right included in the
325 decedent's gross estate or is the taker as a result of the
326 exercise or default in exercise of a general power of
327 appointment held by the decedent, that interest shall be
328 regarded as passing under the terms of the decedent's will for
329 the purposes of paragraph (c) or by intestacy if not disposed of
330 by will. Additionally, any interest included in the measure of
331 the tax by reason of s. 2041 of the Internal Revenue Code
332 passing to the decedent's creditors or the creditors of the
333 decedent's estate shall be regarded as passing to the decedent's
334 estate for purposes of this subparagraph.

335 2. If a trust is the beneficiary of a life insurance
336 policy, annuity, or contractual right included in the decedent's
337 gross estate or is the taker as a result of the exercise or
338 default in exercise of a general power of appointment held by

339 the decedent, that interest shall be regarded as passing under
340 the trust for purposes of paragraph (d).

341 (g)-(d) Common instrument construction.—In the application
342 of this subsection, paragraphs (b)-(f) ~~(a), (b), and (c)~~ shall
343 be applied to apportion the net tax to the recipients under
344 certain governing instruments ~~of the estate and the recipients~~
345 ~~of the decedent's revocable trust~~ as if all recipients under
346 those instruments, other than the estate or revocable trust
347 ~~trusts themselves~~, were taking under a common instrument. This
348 construction applies to:

349 1. The decedent's will and revocable trust if either the
350 estate or the revocable trust is a beneficiary of the other.

351 2. The decedent's revocable trust and any other revocable
352 trust of the decedent if the revocable trust is a beneficiary of
353 the other trust.

354 ~~(c) The net tax imposed under s. 4980A of the Internal~~
355 ~~Revenue Code shall be apportioned among the recipients of the~~
356 ~~interests included in the measure of that tax in the proportion~~
357 ~~that the value of the interest of each bears to the total value~~
358 ~~of all interests included in the measure of that tax.~~

359 (h)-(f) Other interests.—The net tax that is not
360 apportioned to interests under paragraphs (b)-(g) ~~(a), (b), and~~
361 ~~(c)~~, including, ~~but not limited to~~, the net tax attributable to
362 interests passing by intestacy, interests applied in
363 satisfaction of the elective share pursuant to s. 732.2075(2),
364 interests passing by reason of the exercise or nonexercise of a

365 general power of appointment, jointly held interests passing by
 366 survivorship, life insurance, properties in which the decedent
 367 held a reversionary or revocable interest, and annuities and
 368 contractual rights, shall be apportioned among the recipients of
 369 the remaining interests that are included in the measure of the
 370 tax in the proportion that the value of each such interest bears
 371 to the total value of all the remaining interests included in
 372 the measure of the tax.

373 (i)-(g) Liability for payment of interest or penalties.-If
 374 the court finds that it is inequitable to apportion interest,
 375 penalties, or both, in the manner provided in paragraphs (a)-(h)
 376 ~~(a)-(f)~~, the court may assess liability for the payment thereof
 377 in the manner it finds equitable.

378 (j) Liability for payment of tax.-If the court finds that
 379 this section does not apportion any tax that was not effectively
 380 directed by the governing instrument, the court may assess
 381 liability for the payment of the tax in the manner it finds
 382 equitable.

383 (4) DIRECTION AGAINST APPORTIONMENT.-

384 (a) Except as provided in this subsection, a governing
 385 instrument may not direct that taxes be paid from property other
 386 than that passing under the governing instrument.

387 (b)-(h)1. For To be effective as a direction in a governing
 388 instrument to be effective to direct payment of taxes
 389 attributable to property passing under the governing instrument
 390 for payment of tax in a manner different from that provided in

391 this section, the direction must be express ~~governing instrument~~
392 ~~must direct that the tax be paid from assets that pass pursuant~~
393 ~~to that governing instrument, except as provided in this~~
394 ~~section.~~

395 ~~2. If the decedent's will provides that the tax shall be~~
396 ~~apportioned as provided in the decedent's revocable trust by~~
397 ~~specific reference to the trust, the direction in the revocable~~
398 ~~trust shall be deemed to be a direction contained in the will~~
399 ~~and shall control with respect to payment of taxes from assets~~
400 ~~passing under both the will and the revocable trust.~~

401 ~~3. A direction in the decedent's will to pay tax from the~~
402 ~~decedent's revocable trust is effective if a contrary direction~~
403 ~~is not contained in the trust agreement.~~

404 (c)4. For a direction in a governing instrument to be
405 effective to direct payment of taxes attributable to property
406 not passing under the governing instrument from property passing
407 under the governing instrument, the governing instrument must
408 expressly direct ~~refer to this section, or expressly indicate~~
409 ~~that the property passing under the governing instrument is to~~
410 ~~bear the burden of taxation for property not passing under the~~
411 ~~governing instrument. Except as provided in paragraph (d), a~~
412 ~~direction in the governing instrument to the effect that all~~
413 ~~taxes are to be paid from property passing under the governing~~
414 ~~instrument whether attributable to property passing under the~~
415 ~~governing instrument or otherwise shall be effective to direct~~
416 ~~the payment from property passing under the governing instrument~~

417 of taxes attributable to property not passing under the
418 governing instrument.

419 (d) In addition to satisfying the other provisions of this
420 subsection:

421 1.a. For a direction in the decedent's will or revocable
422 trust to be effective to waive the right of recovery provided in
423 s. 2207A of the Internal Revenue Code for tax imposed by reason
424 of s. 2044 of the Internal Revenue Code and any other tax
425 imposed by Florida based on that provision of the Internal
426 Revenue Code, the direction must expressly waive the right of
427 recovery. An express direction that property passing under the
428 will or revocable trust bear the tax imposed by s. 2044 of the
429 Internal Revenue Code is an express waiver of the right of
430 recovery provided in s. 2207A of the Internal Revenue Code. A
431 reference to "qualified terminable interest property" or "QTIP"
432 or property in which the decedent had a "qualifying income
433 interest for life" is deemed to be a reference to property upon
434 which tax is imposed by s. 2044 of the Internal Revenue Code and
435 which is subject to the right of recovery provided in s. 2207A
436 of the Internal Revenue Code.

437 b. If property is included in the gross estate pursuant to
438 both ss. 2044 and 2041 of the Internal Revenue Code, the
439 property is deemed to be included under s. 2044 but not s. 2041
440 for purposes of allocation and apportionment of the tax.

441 2. For a direction in the decedent's will or revocable
442 trust to be effective to waive the right of recovery provided in

443 s. 2207B of the Internal Revenue Code for tax imposed by reason
444 of s. 2036 of the Internal Revenue Code and any other tax
445 imposed by Florida based on that provision of the Internal
446 Revenue Code, the direction must expressly waive the right of
447 recovery. An express direction that property passing under the
448 will or revocable trust bear the tax imposed by s. 2036 of the
449 Internal Revenue Code is deemed to be an express waiver of the
450 right of recovery provided in s. 2207B. If property is included
451 in the gross estate pursuant to both ss. 2038 and 2036 of the
452 Internal Revenue Code, the property is deemed to be included
453 under s. 2038 but not s. 2036 for purposes of allocation and
454 apportionment of the tax, and there is no right of recovery
455 under s. 2207B of the Internal Revenue Code.

456 3. A general statement in the decedent's will or revocable
457 trust waiving all rights of reimbursement or recovery under the
458 Internal Revenue Code is not an express waiver of the rights of
459 recovery provided in s. 2207A or s. 2207B of the Internal
460 Revenue Code.

461 4. For a direction in a governing instrument to be
462 effective to direct the payment of the generation-skipping
463 transfer tax in a manner other than as provided in s. 2603 of
464 the Internal Revenue Code and any other tax imposed by Florida
465 based on that provision of the Internal Revenue Code, the
466 direction must specifically reference the tax imposed by s. 2601
467 of the Internal Revenue Code. A reference to the "generation-
468 skipping transfer tax" or s. 2603 of the Internal Revenue Code

469 is deemed to be a reference to property upon which tax is
470 imposed by reason of s. 2601 of the Internal Revenue Code.

471 (e) If the decedent expressly directs by will, the net tax
472 attributable to property over which the decedent held a general
473 power of appointment may be determined in a manner different
474 from that provided in subsection (2); however, the net tax
475 attributable to that property may not exceed the difference
476 between the total net tax determined pursuant to subsection (2)
477 without regard to this paragraph and the total net tax that
478 would have been payable if the value of the property subject to
479 such power of appointment had not been included in the
480 decedent's gross estate. If tax is attributable to one or more
481 Section 2044 interests pursuant to subsection (2), the net tax
482 attributable to the Section 2044 interests shall be calculated
483 before the application of this paragraph unless the decedent
484 expressly directs otherwise by will.

485 (f) If the decedent's will expressly provides that the tax
486 is to be apportioned as provided in the decedent's revocable
487 trust by specific reference to the revocable trust, an express
488 direction in the revocable trust is deemed to be a direction
489 contained in the will as well as the revocable trust.

490 (g) An express direction in the decedent's will to pay tax
491 from the decedent's revocable trust by specific reference to the
492 revocable trust is effective unless a contrary express direction
493 is contained in the revocable trust.

494 (h) If governing instruments contain effective directions

495 that conflict as to payment of taxes, the most recently executed
496 tax apportionment provision controls to the extent of the
497 conflict. For the purpose of this subsection, if a will or other
498 governing instrument is amended, the date of the codicil to the
499 will or amendment to the governing instrument is regarded as the
500 date of the will or other governing instrument only if the
501 codicil or amendment contains an express tax apportionment
502 provision or an express modification of the tax apportionment
503 provision. A general statement ratifying or republishing all
504 provisions not otherwise amended does not meet this condition.
505 If the decedent's will and another governing instrument were
506 executed on the same date, the will is deemed to be executed
507 after the other governing instrument. The earlier conflicting
508 governing instrument shall control as to any tax remaining
509 unpaid after the application of the later conflicting governing
510 instrument.

511 (i) A grant of permission or authority in a governing
512 instrument to request payment of tax from property passing under
513 another governing instrument is not a direction apportioning the
514 tax to the property passing under the other governing
515 instrument. A grant of permission or authority in a governing
516 instrument to pay tax attributable to property not passing under
517 the governing instrument is not a direction apportioning the tax
518 to property passing under the governing instrument.

519 (j) This section applies to any tax remaining to be paid
520 after the application of any effective express directions. An

521 effective express direction for the payment of tax on certain
522 interests in a manner different from that provided in this
523 section is not effective as an express direction for payment of
524 tax on other interests included in the measure of the tax.

525 ~~5. If there is a conflict as to payment of taxes between~~
526 ~~the decedent's will and the governing instrument, the decedent's~~
527 ~~will controls, except as follows:~~

528 ~~a. The governing instrument shall be given effect with~~
529 ~~respect to any tax remaining unpaid after the application of the~~
530 ~~decedent's will.~~

531 ~~b. A direction in a governing instrument to pay the tax~~
532 ~~attributable to assets that pass pursuant to the governing~~
533 ~~instrument from assets that pass pursuant to that governing~~
534 ~~instrument shall be effective notwithstanding any conflict with~~
535 ~~the decedent's will, unless the tax provision in the decedent's~~
536 ~~will expressly overrides the conflicting provision in the~~
537 ~~governing instrument.~~

538 (5)(6) TRANSFER OF PROPERTY.—The personal representative
539 or fiduciary shall not be required to transfer to a recipient
540 any property reasonably anticipated to be necessary for the
541 payment of taxes. Further, the personal representative or
542 fiduciary shall not be required to transfer any property to the
543 recipient until the amount of the tax due from the recipient is
544 paid by the recipient. If property is transferred before final
545 apportionment of the tax, the recipient shall provide a bond or
546 other security for his or her apportioned liability in the

HB 343

2015

547 amount and form prescribed by the personal representative or
548 fiduciary.

549 (6)~~(7)~~ ORDER OF APPORTIONMENT.—

550 (a) The personal representative may petition at any time
551 for an order of apportionment. If no administration has been
552 commenced at any time after 90 days from the decedent's death,
553 any fiduciary may petition for an order of apportionment in the
554 court in which venue would be proper for administration of the
555 decedent's estate. ~~Formal~~ Notice of the petition for an order of
556 apportionment must be served on ~~shall be given to~~ all interested
557 persons in the same manner as required for service of formal
558 notice. At any time after 6 months from the decedent's death,
559 any recipient may petition the court for an order of
560 apportionment.

561 (b) The court shall determine all issues concerning
562 apportionment. If the tax to be apportioned has not been finally
563 determined, the court shall determine the probable tax due or to
564 become due from all interested persons, apportion the probable
565 tax, and retain jurisdiction over the parties and issues to
566 modify the order of apportionment as appropriate until after the
567 tax is finally determined.

568 (7)~~(8)~~ DEFICIENCY.—

569 (a) If the personal representative or fiduciary does not
570 have possession of sufficient property otherwise distributable
571 to the recipient to pay the tax apportioned to the recipient,
572 whether under this section, the Internal Revenue Code, or the

573 governing instrument, if applicable, the personal representative
 574 or fiduciary shall recover the deficiency in tax so apportioned
 575 to the recipient:

576 1. From the fiduciary in possession of the property to
 577 which the tax is apportioned, if any; and

578 2. To the extent of any deficiency in collection from the
 579 fiduciary, or to the extent collection from the fiduciary is
 580 excused pursuant to subsection (8) ~~(9)~~ and in all other cases,
 581 from the recipient of the property to which the tax is
 582 apportioned, unless relieved of this duty as provided in
 583 subsection (8) ~~(9)~~.

584 (b) In any action to recover the tax apportioned, the
 585 order of apportionment shall be prima facie correct.

586 (c) In any action for the enforcement of an order of
 587 apportionment, the court shall award taxable costs as in
 588 chancery actions, including reasonable attorney ~~attorney's~~ fees,
 589 and may award penalties and interest on the unpaid tax in
 590 accordance with equitable principles.

591 (d) This subsection does ~~shall~~ not authorize the recovery
 592 of any tax from any company issuing life insurance included in
 593 the gross estate, or from any bank, trust company, savings and
 594 loan association, or similar institution with respect to any
 595 account in the name of the decedent and any other person which
 596 passed by operation of law on the decedent's death.

597 (8) ~~(9)~~ RELIEF FROM DUTY.-

598 (a) A personal representative or fiduciary who has the

599 duty under this section of collecting the apportioned tax from
 600 recipients may be relieved of the duty to collect the tax by an
 601 order of the court finding:

602 1. That the estimated court costs and attorney ~~attorney's~~
 603 fees in collecting the apportioned tax from a person against
 604 whom the tax has been apportioned will approximate or exceed the
 605 amount of the recovery;

606 2. That the person against whom the tax has been
 607 apportioned is a resident of a foreign country other than Canada
 608 and refuses to pay the apportioned tax on demand; or

609 3. That it is impracticable to enforce contribution of the
 610 apportioned tax against a person against whom the tax has been
 611 apportioned in view of the improbability of obtaining a judgment
 612 or the improbability of collection under any judgment that might
 613 be obtained, or otherwise.

614 (b) A personal representative or fiduciary shall not be
 615 liable for failure to attempt to enforce collection if the
 616 personal representative or fiduciary reasonably believes it
 617 would have been economically impracticable.

618 (9) ~~(10)~~ UNCOLLECTED TAX.—Any apportioned tax that is not
 619 collected shall be reapportioned in accordance with this section
 620 as if the portion of the property to which the uncollected tax
 621 had been apportioned had been exempt.

622 (10) ~~(11)~~ CONTRIBUTION.—~~Nothing in~~ This section does not
 623 ~~shall~~ limit the right of any person who has paid more than the
 624 amount of the tax apportionable to that person, calculated as if

625 all apportioned amounts would be collected, to obtain
626 contribution from those who have not paid the full amount of the
627 tax apportionable to them, calculated as if all apportioned
628 amounts would be collected, and that right is hereby conferred.
629 In any action to enforce contribution, the court shall award
630 taxable costs as in chancery actions, including reasonable
631 attorney ~~attorney's~~ fees.

632 ~~(11)(12)~~ FOREIGN TAX.—Nothing herein contained shall be
633 construed to require the personal representative or fiduciary to
634 pay any tax levied or assessed by any foreign country, unless
635 specific directions to that effect are contained in the will or
636 other instrument under which the personal representative or
637 fiduciary is acting.

638 Section 2. (1) The amendments made by this act to s.
639 733.817(1)(g) and (2)(c), Florida Statutes, are intended to
640 clarify existing law and apply retroactively to all proceedings
641 pending or commenced after July 1, 2015, in which the
642 apportionment of taxes has not been finally determined or agreed
643 for estates of decedents dying on or after January 1, 2004.

644 (2) The amendments made by this act to s. 733.817(1)(e)3.,
645 (3)(e), (3)(g), (4)(b), (4)(c), (4)(d)1.b., (4)(e), (4)(h), and
646 (6), Florida Statutes, apply to the estates of decedents dying
647 on or after July 1, 2015.

648 (3) Except as otherwise provided in this section, the
649 amendments made by this act to s. 733.817, Florida Statutes, are
650 intended to clarify existing law and apply retroactively to all

HB 343

2015

651 proceedings pending on or after July 1, 2015, in which the
652 apportionment of taxes has not been finally determined or
653 agreed.

654 Section 3. This act shall take effect July 1, 2015.