

2021 Regular Session

HOUSE BILL NO. 696

BY REPRESENTATIVE LANDRY

TAX/INHERITANCE TAX: Levies a state tax on the transfer of certain property

1 AN ACT

2 To enact Chapter 20 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, to
3 be comprised of R.S. 47:1700.1 through 1700.4, relative to the state estate tax; to
4 levy a state tax on the transfer of certain property; to provide for the rate of the tax;
5 to provide for definitions; to provide for the disallowance or deduction of certain
6 amounts; to provide for the payment of the tax; to authorize installment agreements
7 under certain circumstances; to require the promulgation of rules; to provide for
8 requirements and limitations; to provide for applicability; to provide for an effective
9 date; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Chapter 20 of Subtitle II of Title 47 of the Louisiana Revised Statutes of
12 1950, comprised of R.S. 47:1700.1 through 1700.4 is hereby enacted to read as follows:

13 CHAPTER 20. ESTATE TAX

14 §1700.1. Definitions

15 As used in this Chapter the following words shall have the following
16 meanings, unless the context clearly indicates otherwise:

- 17 (1) "Decedent" shall mean a deceased individual.
- 18 (2) "Department" shall mean the Department of Revenue.
- 19 (3) "Exclusion amount" shall mean one million dollars for decedents dying
20 on or after January 1, 2021.

1 (4) "Federal return" shall mean any tax return required by Chapter 11 of the
2 Internal Revenue Code.

3 (5) "Federal tax" shall mean any tax levied pursuant to the provisions of
4 Chapter 11 of the Internal Revenue Code.

5 (6) "Federal taxable estate" shall mean the taxable estate determined
6 pursuant to the provisions of Chapter 11 of the Internal Revenue Code excluding the
7 deduction for state estate, inheritance, legacy, or succession taxes allowed pursuant
8 to 26 U.S.C. 2058.

9 (7) "Gross estate" shall have the same meaning as provided for in 26 U.S.C.
10 2031.

11 (8) "Louisiana taxable estate" shall mean the gross estate including the value
12 of any property included in the calculation of gross estate pursuant to 26 U.S.C. 2044
13 less:

14 (a) The exclusion amount provided for in Paragraph (3) of this Section.

15 (b) The amount of deduction allowed pursuant to 26 U.S.C. 2053.

16 (c) The amount of deduction allowed pursuant to 26 U.S.C. 2054.

17 (d) The amount of the deduction allowed pursuant to 26 U.S.C. 2055.

18 (e) The amount of deduction allowed pursuant to 26 U.S.C. 2056 and 2056A.

19 (9) "Person" shall have the same meaning as provided for in R.S. 47:2(2).

20 (10) "Property" shall mean any property included in the gross estate.

21 (11) "Resident" shall mean a decedent domiciled in Louisiana at the time of
22 death as determined by Title II of Book I of the Louisiana Civil Code.

23 (12) "Secretary" shall mean the Secretary of the department.

24 (13) "Transfer" shall have the same meaning as provided for in 26 U.S.C.
25 2001. Transfer shall include any shifting of economic benefit in property or any
26 power or legal privilege incidental to the ownership or enjoyment of property upon
27 death.

28 §1700.2. Imposition of tax

1 A. There shall be levied and collected a tax on every transfer of property
2 located in Louisiana, including all intangible property owned by a resident located
3 in Louisiana. Except as provided for in Subsection B of this Section, the tax shall
4 be ten percent of the Louisiana taxable estate value.

5 B. If any property in the decedent's estate is located outside of Louisiana, the
6 tax shall be calculated as a fraction, the numerator of which shall be the value of the
7 property located in Louisiana and the denominator of which shall be the value of the
8 decedent's gross estate which shall be multiplied by the amount of the tax determined
9 in Subsection A of this Section. Property qualifying for a deduction shall be
10 excluded from the numerator and the denominator of the fraction.

11 C. The tax imposed in this Chapter shall be independent of any federal estate
12 tax obligation and shall not be affected by the termination of the federal estate tax.

13 D. The secretary of the department shall promulgate rules in accordance with
14 the Administrative Procedure Act to administer the tax imposed by this Chapter.

15 §1700.3. Elections and valuations; disallowance of other deductions

16 A. If the federal taxable estate on the federal return is determined by making
17 an election pursuant to 26 U.S.C. 2056 and 2056A, or if no federal return is required
18 to be filed, the secretary may provide for a Louisiana election, in accordance with 26
19 U.S.C. 2056 and 2056A, for the purpose of determining the amount of tax due under
20 this Chapter. The election shall be binding on the estate and all beneficiaries. All
21 other elections or valuations on the state return shall be made in accordance with the
22 federal return if required and as provided by rules and on forms prescribed by the
23 secretary.

24 B. If a taxpayer makes an election consistent with 26 U.S.C. 2056 as
25 permitted under this Section, the Louisiana taxable estate of the taxpayer and the
26 Louisiana taxable estate for the surviving spouse, shall be adjusted as follows:

27 (1) For the taxpayer that made the election, any amount deducted in
28 accordance with the provisions of 26 U.S.C. 2056(b)(7) shall be added to the

1 Louisiana taxable estate and the value of property of which a Louisiana election
2 under this Section was made shall be deducted from the Louisiana taxable estate.

3 (2) For the estate of the surviving spouse, the amount included in the estate's
4 gross estate pursuant to 26 U.S.C. 2044(a) and (b)(1)(A), shall be deducted from the
5 Louisiana taxable estate and the value of any property for which an election under
6 this Section was previously made shall be added to the Louisiana taxable estate.

7 C. Amounts deducted for federal income tax purposes under 26 U.S.C. 642(g)
8 shall not be considered deductions for purposes of computing the amount of tax due
9 pursuant to this Chapter.

10 §1700.4. Returns and payment of tax; administration of succession

11 A. Except as provided for in Paragraph (1) of this Subsection, a taxpayer
12 shall file a return with the secretary on or before the first anniversary of the
13 decedent's date of death.

14 (1) If the Louisiana taxable estate, calculated without regard to the exclusion
15 amount, is less than the exclusion amount, the secretary shall accept a written
16 declaration under penalty of perjury from a taxpayer stating the Louisiana taxable
17 estate is less than the exclusion amount on forms prescribed by the secretary in lieu
18 of filing a tax return.

19 (2) Upon request of the taxpayer, the secretary may grant a reasonable
20 extension of time to file the return required by this Section. In granting an extension,
21 the secretary shall consider the complexity and administration of the decedent's
22 estate.

23 B. Any tax imposed pursuant to the provisions of this Chapter shall be paid
24 to the secretary on or before the first anniversary of the decedent's date of death.
25 Upon request of the taxpayer, the secretary may grant an extension of time to pay the
26 tax for a term not to exceed one year.

27 C. Except as provided in this Subsection, no judgment of possession shall be
28 rendered in any succession proceeding in this state until the tax due under this

1 Chapter is paid to the secretary. No affidavit of small succession shall be rendered
2 by a notary public if the Louisiana taxable state exceeds zero.

3 (1) At the discretion of the secretary, the secretary may accept security
4 furnished by the taxpayer to provide for the payment of the tax imposed on the
5 transfer of property or the taxpayer may enter into an installment agreement to pay
6 the tax due subject to the terms and conditions of the agreement.

7 (2) The secretary's written acceptance of the security agreement to pay tax
8 due in installments shall be filed in the succession proceedings. Upon the filing of
9 the written acceptance, a judgment of possession may be rendered in the discretion
10 of the court.

11 Section 2. Chapter 1 of Subtitle IV of Title 47 of the Louisiana Revised Statutes of
12 1950, comprised of R.S. 47:2401 through 2451, is hereby repealed in its entirety.

13 Section 3. The provisions of this Act shall be applicable to deaths occurring on or
14 after Jan. 1, 2021.

15 Section 4. This Act shall become effective upon signature by the governor or, if not
16 signed by the governor, upon expiration of the time for bills to become law without signature
17 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
18 vetoed by the governor and subsequently approved by the legislature, this Act shall become
19 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 696 Original

2021 Regular Session

Landry

Abstract: Levies a 10% state tax on the transfer of property in La. applicable to estates of decedents dying on or after Jan. 1, 2021.

Present law levies a state estate transfer tax if a state death tax credit is allow against the federal estate tax. However, the Economic Growth and Tax Relief Reconciliation Act of 2001 phased out the state estate tax credit between 2002 and 2005 and replaced the credit with a deduction for state estate taxes for deaths that occur after Dec. 31, 2004. Under present federal law, no state estate and transfer tax is due in La. for deaths after Dec. 31, 2004.

Proposed law repeals present law.

Proposed law levies a state tax on every transfer of property located in this state, including all intangible property owned by a resident. The amount of the tax shall equal 10% of the La. taxable estate value.

Proposed law provides that if any property in the decedent's estate is located outside of La., the tax shall be calculated as a fraction, the numerator of which shall be the value of the property located in La. and the denominator of which shall be the value of the decedent's gross estate which shall be multiplied by the amount of tax due on the transfer of property due pursuant to proposed law.

Proposed law provides that the state estate tax shall be independent of any federal estate tax obligation and shall not be affected by the termination of the federal estate tax.

Proposed law authorizes the secretary of the Dept. of Revenue to provide for a La. election for determination of the amount of state tax due on the transfer of property. The election shall be binding on the estate and all beneficiaries. All other elections or valuations on the state return shall be made in accordance with the federal return if required and as provided by rules and on forms prescribed by the secretary.

Proposed law provides that if a taxpayer makes an election consistent with present federal law, the La. taxable estate of the taxpayer and the surviving spouse shall be adjusted in accordance with proposed law. However, amounts deducted for federal income tax purposes shall be prohibited from being deducted for purposes of computing the state estate transfer tax.

Proposed law requires a taxpayer to file a return on or before the first anniversary of the decedent's death. However, if the La. taxable estate is less than the \$1M, the secretary shall accept a written declaration from a taxpayer confirming the value of the La. taxable estate in lieu of filing a tax return. Proposed law authorizes the secretary to grant a reasonable extension of time to file the return.

Proposed law requires the state estate transfer tax to be paid on or before the first anniversary of the decedent's death. The secretary may grant an extension of time not to exceed one year to pay the tax.

Proposed law prohibits a judgment of possession from being rendered in any succession proceeding until the state estate transfer tax is paid. Further prohibits an affidavit of small succession from being rendered by a notary public if the La. taxable state exceeds zero.

Proposed law grants the secretary discretion to accept security furnished by the taxpayer to provide for the payment of the tax or to accept payment of the tax via an installment agreement. Proposed law requires the secretary's written acceptance of the installment agreement with the taxpayer to be filed in the succession proceedings.

Proposed law requires the secretary of the Dept. of Revenue to promulgate rules in accordance with the Administrative Procedure Act to administer the tax.

Applicable to deaths occurring on or after Jan. 1, 2021.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 47:1700.1-1700.4; Repeals R.S. 47:2401-2451)