

HOUSE BILL No. 1040

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-4.1.

Synopsis: Inheritance tax affidavit. Provides that an affidavit stating that no inheritance tax is due after applying the inheritance tax exemptions may be submitted to a county assessor with a request for a consent to transfer. Provides that the department of state revenue or the county assessor may rely upon the affidavit in determining that the transfer will not jeopardize collection of inheritance tax. Provides that the affidavit may be recorded in the office of the county recorder if the affidavit contains the legal description of the real property in a decedent's estate. Creates a presumption that no inheritance tax is due if the affidavit is properly executed and recorded. Provides that an inheritance tax lien may not attach to real property if the affidavit is properly executed and recorded in the county in which the real property
(Continued next page)

Effective: July 1, 1999.

Foley

January 6, 1999, read first time and referred to Committee on Judiciary.

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is located unless the department of state revenue obtains an order that an inheritance tax is owed. Repeals a redundant statute concerning the form of an affidavit used to state that no inheritance tax is due. (The introduced version of this bill was prepared by the probate code study commission.)

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First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1040



A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-4.1-4-0.5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 0.5. (a) No inheritance
3 tax return is required under this chapter unless the total fair market
4 value of the property interests transferred by the decedent to a
5 transferee under a taxable transfer or transfers exceeds the exemption
6 provided to the transferee under sections 9.1 through 12 of IC 6-4.1-3.
7 For purposes of this section, the fair market value of a property interest
8 is its fair market value as of the appraisal date prescribed by
9 IC 6-4.1-5-1.5.

10 (b) **The department of state revenue shall prescribe the affidavit**
11 **form that may be used to state that no inheritance tax is due after**
12 **applying the exemptions under IC 6-4.1-3. The affidavit may be:**

13 (1) **recorded in the office of the county recorder if the**
14 **affidavit includes the legal description of the real property in**
15 **the decedent's estate; or**

16 (2) **submitted to the department of state revenue or the**
17 **appropriate county assessor with a request for a consent to**



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1 **transfer under IC 6-4.1-8-4.**

2 **(c) If the department of state revenue or the appropriate county**
 3 **assessor consents to a transfer of personal property under**
 4 **IC 6-4.1-8-4 after considering an affidavit described in subsection**
 5 **(b), the full value of the personal property may be transferred.**

6 **(d) It is presumed that no inheritance tax is due and that no**
 7 **inheritance tax return is required if an affidavit described in**
 8 **subsection (b) is:**

9 **(1) properly executed; and**

10 **(2) recorded in the decedent's county of residence.**

11 **(e) Except as provided in subsection (f), a lien attached under**
 12 **IC 6-4.1-8-1 to the real property owned by a decedent terminates**
 13 **when an affidavit described in subsection (b) is:**

14 **(1) properly executed; and**

15 **(2) recorded in the county in which the real property is**
 16 **located.**

17 **(f) A lien terminated under subsection (e) is reattached to the**
 18 **real property under IC 6-4.1-8-1 if the department of state revenue**
 19 **obtains an order that an inheritance tax is owed.**

20 SECTION 2. IC 6-4.1-8-1 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. The inheritance tax
 22 imposed as a result of a decedent's death is a lien on the property
 23 transferred by him. Except as otherwise provided in IC 6-4.1-6-6(b),
 24 the inheritance tax accrues and the lien attaches at the time of the
 25 decedent's death. The lien terminates when the inheritance tax is paid,
 26 **when an affidavit stating that no inheritance tax is due is recorded**
 27 **under IC 6-4.1-4-0.5**, or five (5) years after the date of the decedent's
 28 death, whichever occurs first. In addition to the lien, the transferee of
 29 the property and any personal representative or trustee who has
 30 possession of or control over the property are personally liable for the
 31 inheritance tax.

32 SECTION 3. IC 6-4.1-8-4 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) A person who has
 34 possession of or control over personal property held jointly by a
 35 resident decedent and another person may not transfer the property to
 36 the surviving joint tenant, unless:

37 (1) the surviving joint tenant is the decedent's surviving spouse;

38 or

39 (2) the property is money held in a joint checking account;

40 without the written consent of the department of state revenue or the
 41 county assessor of the county in which the resident decedent was
 42 domiciled at the time of the decedent's death.



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1 (b) Except as provided in subsection (c), a person who has
 2 possession of or control over personal property held in a trust that is
 3 subject to the Indiana inheritance or estate tax at the time of a resident
 4 decedent's death may not transfer the property to a beneficiary or any
 5 other person, unless the beneficiary or other person is the decedent's
 6 surviving spouse, without the written consent of the department of state
 7 revenue or the county assessor of the county in which the resident
 8 decedent was domiciled at the time of the decedent's death.

9 (c) A person who has possession of or control over personal
 10 property held in trust may transfer the property without the written
 11 consent of the department of state revenue or the county assessor of the
 12 county in which the resident decedent was domiciled at the time of the
 13 decedent's death under the following conditions:

14 (1) The transferee is domiciled in Indiana.

15 (2) The transferee completes a sworn affidavit on a form
 16 prescribed by the department of state revenue that states:

17 (A) the transfer of the personal property is not subject to
 18 Indiana inheritance or estate tax; and

19 (B) the reasons the transfer is not subject to tax.

20 (3) A copy of the affidavit required under subdivision (2) is
 21 immediately filed with the department of state revenue.

22 (d) A person who has possession of or control over a resident
 23 decedent's personal property (except proceeds payable under a life
 24 insurance policy) may not transfer the property to any other person,
 25 unless:

26 (1) the other person is the decedent's surviving spouse; or

27 (2) the property is money held in a checking account;

28 without the written consent of the department of state revenue or the
 29 county assessor of the county in which the resident decedent was
 30 domiciled at the time of the decedent's death.

31 (e) The department of state revenue or the appropriate county
 32 assessor may consent to a transfer if the department or the county
 33 assessor believes that the transfer will not jeopardize the collection of
 34 inheritance tax.

35 **(f) The department of state revenue or the appropriate county**
 36 **assessor may rely upon an affidavit prescribed by the department**
 37 **of state revenue under IC 6-4.1-4-0.5(b) to determine that a**
 38 **transfer will not jeopardize the collection of inheritance tax.**

39 (g) The department of state revenue shall send a copy of any
 40 consent to transfer that it issues under this section to the county
 41 assessor of the county in which the resident decedent was domiciled at
 42 the time of the decedent's death.



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1 SECTION 4. IC 6-4.1-3-12.5 IS REPEALED [EFFECTIVE JULY
2 1, 1999].

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