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# SENATE BILL No. 111

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-4.1.

**Synopsis:** Inheritance tax affidavit and due dates. Allows an affidavit stating that no inheritance tax is due after inheritance tax exemptions are taken to be submitted to a county assessor with a request for a consent to transfer. Allows the department of state revenue or the county assessor to 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 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. Changes the following: (1) the due date for the inheritance tax, estate tax, and generation-skipping tax; (2) the due date for filing an inheritance tax return; and (3) the inheritance tax early payment discount deadline. (The introduced version of this bill was prepared by the probate code study commission.)

**Effective:** July 1, 2000.

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January 20, 2000, read first time and referred to Committee on Judiciary.

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Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

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# SENATE BILL No. 111



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, 2000]: 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**



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 6-4.1-4-1 IS AMENDED TO READ AS  
 21 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 1. (a) Except as  
 22 otherwise provided in section 0.5 of this chapter or in IC 6-4.1-5-8, the  
 23 personal representative of a resident decedent's estate or the trustee or  
 24 transferee of property transferred by the decedent shall file an  
 25 inheritance tax return with the appropriate probate court within ~~twelve~~  
 26 ~~(12)~~ **nine (9)** months after the date of the decedent's death. The person  
 27 filing the return shall file it under oath on the forms prescribed by the  
 28 department of state revenue. The return shall:

29          (1) contain a statement of all property interests transferred by the  
 30 decedent under taxable transfers;

31          (2) indicate the fair market value, as of the appraisal date  
 32 prescribed by IC 6-4.1-5-1.5, of each property interest included in  
 33 the statement;

34          (3) contain an itemized list of all inheritance tax deductions  
 35 claimed with respect to property interests included in the  
 36 statement;

37          (4) contain a list which indicates the name and address of each  
 38 transferee of the property interests included in the statement and  
 39 which indicates the total value of the property interests transferred  
 40 to each transferee; and

41          (5) contain the name and address of the attorney for the personal  
 42 representative or for the person filing the return.



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1 (b) If the decedent died testate, the person filing the return shall  
2 attach a copy of the decedent's will to the return.

3 SECTION 3. IC 6-4.1-4-2 IS AMENDED TO READ AS  
4 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 2. If the appropriate  
5 probate court finds that because of an unavoidable delay an inheritance  
6 tax return cannot be filed within ~~twelve (12)~~ **nine (9)** months after the  
7 date of decedent's death, the court may extend the period for filing the  
8 return. After the expiration of the first extension period, the court may  
9 grant a subsequent extension if the person seeking the extension files  
10 a written motion which states the reason for the delay in filing the  
11 return. For purposes of sections 3 and 6 of this chapter, an inheritance  
12 tax return is not due until the last day of any extension period or  
13 periods granted by the court under this section.

14 SECTION 4. IC 6-4.1-4-7 IS AMENDED TO READ AS  
15 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 7. (a) Except as  
16 otherwise provided in section 0.5 of this chapter, the personal  
17 representative of a nonresident decedent's estate or the trustee or  
18 transferee of property transferred by the decedent shall file an  
19 inheritance tax return with the department of state revenue within  
20 ~~twelve (12)~~ **nine (9)** months after the date of the decedent's death. The  
21 person filing the return shall file it under oath on the forms prescribed  
22 by the department of state revenue. The return shall:

- 23 (1) contain a statement of all property interests transferred by the  
24 decedent under taxable transfers;
- 25 (2) indicate the fair market value, as of the appraisal date  
26 prescribed by IC 6-4.1-5-1.5, of each property interest included in  
27 the statement;
- 28 (3) contain an itemized list of all inheritance tax deductions  
29 claimed with respect to property interests included in the  
30 statement;
- 31 (4) contain a list which indicates the name and address of each  
32 transferee of the property interests included in the statement and  
33 which indicates the total value of the property interests transferred  
34 to each transferee; and
- 35 (5) contain the name and address of the attorney for the personal  
36 representative or for the person filing the return.

37 (b) If the decedent died testate, the person filing the return shall  
38 attach a copy of the decedent's will to the return.

39 SECTION 5. IC 6-4.1-8-1 IS AMENDED TO READ AS  
40 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 1. The inheritance tax  
41 imposed as a result of a decedent's death is a lien on the property  
42 transferred by him. Except as otherwise provided in IC 6-4.1-6-6(b),

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1 the inheritance tax accrues and the lien attaches at the time of the  
 2 decedent's death. The lien terminates when the inheritance tax is paid,  
 3 **when an affidavit stating that no inheritance tax is due is recorded**  
 4 **under IC 6-4.1-4-0.5**, or five (5) years after the date of the decedent's  
 5 death, whichever occurs first. In addition to the lien, the transferee of  
 6 the property and any personal representative or trustee who has  
 7 possession of or control over the property are personally liable for the  
 8 inheritance tax.

9 SECTION 6. IC 6-4.1-8-4 IS AMENDED TO READ AS  
 10 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 4. (a) A person who has  
 11 possession of or control over personal property held jointly by a  
 12 resident decedent and another person may not transfer the property to  
 13 the surviving joint tenant, unless:

14 (1) the surviving joint tenant is the decedent's surviving spouse;  
 15 or

16 (2) the property is money held in a joint checking account;  
 17 without the written consent of the department of state revenue or the  
 18 county assessor of the county in which the resident decedent was  
 19 domiciled at the time of the decedent's death.

20 (b) Except as provided in subsection (c), a person who has  
 21 possession of or control over personal property held in a trust that is  
 22 subject to the Indiana inheritance or estate tax at the time of a resident  
 23 decedent's death may not transfer the property to a beneficiary or any  
 24 other person, unless the beneficiary or other person is the decedent's  
 25 surviving spouse, without the written consent of the department of state  
 26 revenue or the county assessor of the county in which the resident  
 27 decedent was domiciled at the time of the decedent's death.

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

33 (1) The transferee is domiciled in Indiana.

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

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

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

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

41 (d) A person who has possession of or control over a resident  
 42 decedent's personal property (except proceeds payable under a life

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1 insurance policy) may not transfer the property to any other person,  
2 unless:

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

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

5 without the written consent of the department of state revenue or the  
6 county assessor of the county in which the resident decedent was  
7 domiciled at the time of the decedent's death.

8 (e) The department of state revenue or the appropriate county  
9 assessor may consent to a transfer if the department or the county  
10 assessor believes that the transfer will not jeopardize the collection of  
11 inheritance tax.

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

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

20 SECTION 7. IC 6-4.1-9-1 IS AMENDED TO READ AS  
21 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 1. (a) Except as  
22 otherwise provided in IC 6-4.1-6-6(b), the inheritance tax imposed as  
23 a result of a decedent's death is due ~~eighteen (18)~~ **twelve (12)** months  
24 after ~~his the decedent's~~ date of death. If a person liable for payment of  
25 inheritance tax does not pay the tax on or before the due date, ~~he the~~  
26 **person** shall, except as provided in subsection (b) of this section, pay  
27 interest on the delinquent portion of the tax at the rate of ten percent  
28 (10%) per year from the date of the decedent's death to the date  
29 payment is made.

30 (b) If an unavoidable delay, such as necessary litigation, prevents a  
31 determination of the amount of inheritance tax due, the appropriate  
32 probate court, in the case of a resident decedent, or the department of  
33 state revenue, in the case of a non-resident decedent, may reduce the  
34 rate of interest imposed under this section, for the time period  
35 beginning on the date of the decedent's death and ending when the  
36 cause of delay is removed, to six percent (6%) per year.

37 SECTION 8. IC 6-4.1-9-2 IS AMENDED TO READ AS  
38 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 2. If the inheritance tax  
39 imposed as a result of a decedent's death is paid within ~~one (1) year~~  
40 **nine (9) months** after ~~his the decedent's~~ date of death, the person  
41 making the payment is entitled to a five percent (5%) reduction in the  
42 inheritance tax due. When payment is so made, the person collecting

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1 the tax shall grant the five percent (5%) reduction to the payor.

2 SECTION 9. IC 6-4.1-11-3 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 3. (a) The Indiana  
4 estate tax accrues at the time of the decedent's death. Except as  
5 provided in subsection (b) of this section, the Indiana estate tax is due  
6 ~~eighteen (18)~~ **twelve (12)** months after the date of the decedent's death.

7 (b) Any Indiana estate tax, which results from a final change in the  
8 amount of federal estate tax, is due:

9 (1) eighteen (18) months after the date of the decedent's death; or

10 (2) one (1) month after final notice of the federal estate tax due is  
11 given to the person liable for the tax;

12 whichever is later.

13 SECTION 10. IC 6-4.1-11.5-9 IS AMENDED TO READ AS  
14 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 9. The transfer tax is  
15 due ~~eighteen (18)~~ **twelve (12)** months after the date of death of the  
16 person whose death resulted in the generation-skipping transfer.

17 SECTION 11. IC 6-4.1-3-12.5 IS REPEALED [EFFECTIVE JULY  
18 1, 2000].

19 SECTION 12. [EFFECTIVE JULY 1, 2000] **IC 6-4.1-4-1,**  
20 **IC 6-4.1-4-2, IC 6-4.1-4-7, IC 6-4.1-9-1, IC 6-4.1-9-2, IC 6-4.1-11-3,**  
21 **and IC 6-4.1-11.5-9, all as amended by this act, apply to the estate**  
22 **of an individual who dies after June 30, 2000.**

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