

IC 6-4.1-2

Chapter 2. Imposition of the Inheritance Tax

IC 6-4.1-2-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to section 4 of this chapter by P.L.58-1990 do not apply to decedents who die before January 1, 1991.

(2) The amendments made to sections 2 and 3 of this chapter by P.L.78-1993 do not apply to individuals who die before July 1, 1993.

As added by P.L.220-2011, SEC.150.

IC 6-4.1-2-1

Time of imposition; transfers subject to tax

Sec. 1. (a) An inheritance tax is imposed at the time of a decedent's death on certain property interest transfers made by him. The transfer of a property interest is subject to the tax if:

(1) the property transferred is described in:

(i) section 2 of this chapter if the property is transferred by a resident decedent; or

(ii) section 3 of this chapter if the property is transferred by a non-resident decedent;

(2) the transfer is described in section 4 of this chapter; and

(3) neither the transfer nor the property is exempt from the inheritance tax under IC 6-4.1-3.

(b) For purposes of this article, a transfer described in section 4 of this chapter is considered a transfer made by the deceased transferor regardless of when the transferee acquires the property interest.

As added by Acts 1976, P.L.18, SEC.1.

IC 6-4.1-2-2

Property transfers of resident decedent

Sec. 2. (a) The inheritance tax applies to a property interest transfer made by a resident decedent if the interest transferred is in:

(1) real property located in this state;

(2) tangible personal property which does not have an actual situs outside this state; or

(3) intangible personal property regardless of where it is located.

(b) The inheritance tax does not apply to a property interest transfer made by a resident decedent if the interest transferred is in:

(1) real property located outside this state, regardless of whether the property is held in a trust or whether the trustee is required to distribute the property in-kind; or

(2) real property located in this state, if:

(A) the real property was transferred to an irrevocable trust

- during the decedent's lifetime;
- (B) the transfer to the trust was not made in contemplation of the transferor's death, as determined under IC 6-4.1-2-4; and
- (C) the decedent does not have a retained interest in the trust.

As added by Acts 1976, P.L.18, SEC.1. Amended by P.L.78-1993, SEC.1.

IC 6-4.1-2-3

Property transfers of nonresident decedent

Sec. 3. The inheritance tax applies to a property interest transfer made by a nonresident decedent if the interest transferred is in:

- (1) real property located in this state, regardless of whether the property is held in a trust or whether the trustee is required to distribute the property in-kind, unless:
 - (A) the real property was transferred to an irrevocable trust during the decedent's lifetime;
 - (B) the transfer to the trust was not made in contemplation of the transferor's death, as determined under section 4 of this chapter; and
 - (C) the decedent does not have a retained interest in the trust; or
- (2) tangible personal property which has an actual situs in this state.

As added by Acts 1976, P.L.18, SEC.1. Amended by Acts 1979, P.L.75, SEC.2; P.L.78-1993, SEC.2; P.L.42-2011, SEC.16.

IC 6-4.1-2-4

Transfers of interests in property; transfers in contemplation of death; transfers for consideration

Sec. 4. (a) The inheritance tax applies to transfers of property interests described in subsection (d) and to the following types of property interest transfers:

- (1) transfers which are made under a deceased transferor's will or under the laws of intestate succession, as a result of the transferor's death;
- (2) transfers which are made in contemplation of the transferor's death;
- (3) transfers which are made in such a manner that they are intended to take effect in possession or enjoyment at or after the transferor's death;
- (4) transfers which are made in payment of a claim against the transferor's estate if:
 - (A) the claim results from a contract or antenuptial agreement made by the transferor; and
 - (B) payment of the amount claimed is due at or after the transferor's death under the terms of the transferor's will or the contract;
- (5) those jointly held property transfers described in section 5

of this chapter;

(6) those transfers which are made by a trust deed in the manner described in section 6 of this chapter; and

(7) those transfers which are made to an executor or trustee in the manner described in section 7 of this chapter.

(b) A transfer is presumed to have been made in contemplation of the transferor's death if it is made within one (1) year before the transferor's date of death. However, the presumption is rebuttable.

(c) If a transfer described in subsection (a)(1), (a)(2), (a)(3), or (a)(4) is made for valuable consideration, the value of the property so transferred equals the remainder of:

(1) the total value of the property transferred; minus

(2) the equivalent in money value of the consideration received by the transferor.

For purposes of this subsection, the term "consideration" does not include love or affection.

(d) If at the time of death a surviving spouse has been entitled to income from a property interest that was the subject of a previous transfer exempt from inheritance tax under IC 6-4.1-3-7(b) or IC 6-4.1-3-7 (c), then the value of the property interest at the time of death of the surviving spouse is subject to the inheritance tax as if it were a transfer of property owned by the surviving spouse. The value of a property interest subject to inheritance tax under this section includes the value of each gift of any part of the property interest made by the surviving spouse in contemplation of death.

As added by Acts 1976, P.L.18, SEC.1. Amended by Acts 1982, P.L.55, SEC.1; P.L.58-1990, SEC.1.

IC 6-4.1-2-5

Joint ownership with rights of survivorship

Sec. 5. If property is held by two (2) or more individuals jointly with rights of survivorship, the exercise of the rights of the surviving joint owner or owners to the immediate ownership or possession and enjoyment of the property upon the death of one (1) of the joint owners is a transfer to which the inheritance tax applies. The value of the property so transferred equals the remainder of (1) the total value of the jointly held property, minus (2) the value of that portion of the jointly held property which the surviving joint owner or owners prove belonged to him or them.

As added by Acts 1976, P.L.18, SEC.1. Amended by Acts 1982, P.L.56, SEC.1.

IC 6-4.1-2-6

Transfers by deed of trust with powers reserved in transferor

Sec. 6. If a transferor transfers property by a deed of trust in such a manner that he reserves to:

(1) himself any interest; or

(2) himself and others powers of revocation, alteration, or amendment which if exercised would cause the property to revert to the transferor;

then the inheritance tax imposed as a result of the transferor's death applies to the transfer. The value of the property so transferred equals the value of the property subject to the powers, and in respect to which the powers remain unexercised, at the time of the transferor's death.

As added by Acts 1976, P.L.18, SEC.1.

IC 6-4.1-2-7

Transfers to executor as trustee in lieu of fee

Sec. 7. If an individual transfers property to an executor or trustee in lieu of his fee, the inheritance tax applies to the transfer if the value of the property transferred exceeds the fee that would have been due if the transfer had not been made. The value of the property so transferred equals the amount of the excess.

As added by Acts 1976, P.L.18, SEC.1.