COMMITTEE REPORT

April 21, 2010

**S. 1348**

Introduced by Senator Campsen

S. Printed 4/21/10--S.

Read the first time April 13, 2010.

**THE COMMITTEE ON FINANCE**

To whom was referred a Bill (S. 1348) to amend Chapter 16, Title 12 of the 1976 Code, relating to the estate tax, by adding Section 12‑16‑1960 to provide that the will or trust, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

HUGH K. LEATHERMAN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**REVENUE IMPACT 1/**

This bill would have no impact on general fund revenue.

**Explanation**

This bill mandates that wills or trusts of a decedent who dies in 2010 that contain formulae referring to unified credits, estate tax exemptions, and other specified terms relating to federal estate tax are deemed to refer to the federal estate tax and generation-skipping transfer tax laws as they applied on December 31, 2009. The Economic Growth and Tax Relief Reconciliation Act of 2001 phased out the state death tax credit in 2005. South Carolina currently imposes an estate tax based on the amount of the federal credit on the transfer of the taxable estate of every resident. Since the state death credit was eliminated at the federal level, South Carolina does not receive any estate tax revenue from estates of decedents that died after January 1, 2005. The 2001 Act also repealed the federal estate tax and generation-skipping tax for 2010. This bill allow wills or trusts that refer to an amount or percentage of the unified credit, estate tax exemption, or other specified terms to allocate the assets as if the federal estate tax were still in effect. Without any further federal legislation the federal estate and generation-skipping taxes are scheduled to return in 2011 with a $1 million estate exemption and a maximum tax rate of 55%.

*Approved By:*

William C. Gillespie

Board of Economic Advisors

1/ This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.

**A** **BILL**

TO AMEND CHAPTER 16, TITLE 12 OF THE 1976 CODE, RELATING TO THE ESTATE TAX, BY ADDING SECTION 12‑16‑1960 TO PROVIDE THAT THE WILL OR TRUST OF A DECEDENT WHO DIES IN 2010 THAT CONTAINS CERTAIN FORMULAE SHALL BE DEEMED TO REFER TO THE FEDERAL ESTATE TAX LAW AS IT APPLIED ON DECEMBER 31, 2009.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 16, Title 12 of the 1976 Code is amended by adding:

“Section 12‑16‑1960. (A) A will or trust of a decedent who dies after December 31, 2009, and before January 1, 2011, that contains a formula referring to the ‘unified credit,’ ‘estate tax exemption,’ ‘applicable exemption amount,’ ‘applicable credit amount,’ ‘applicable exclusion amount,’ ‘generation‑skipping transfer tax exemption,’ ‘GST exemption,’ ‘marital deduction,’ ‘maximum marital deduction,’ ‘unlimited marital deduction,’ ‘inclusion ratio,’ ‘applicable fraction,’ or any section of the Internal Revenue Code relating to the federal estate tax or generation‑skipping transfer tax, or that measures a share of an estate or trust based on the amount that can pass free of federal estate tax or the amount that can pass free of federal generation‑skipping transfer taxes, or that is otherwise based on a similar provision of federal estate tax or generation‑skipping transfer tax law, shall be deemed to refer to the federal estate tax and generation‑skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009. This provision shall not apply with respect to a will or trust that is executed or amended after December 31, 2009, or that manifests an intent that a contrary rule shall apply if the decedent dies on a date on which there is no then‑applicable federal estate or generation‑skipping transfer tax. If the federal estate or generation‑skipping transfer tax becomes effective before that date, the reference to January 1, 2011, in this subsection shall refer instead to the first date on which such tax becomes legally effective.

(B) The personal representative or any affected beneficiary under the will or other instrument may bring a proceeding to determine whether the decedent intended that the formulae under subsection (A) be construed with respect to the law as it existed after December 31, 2009. The proceeding must be commenced within twelve months following the death of the decedent.”

SECTION 2. This act takes effect upon approval by the Governor.

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