

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

700.3921 Tax on separate interests; governing instrument provisions.

Sec. 3921. (1) Unless specific directions to that effect are contained in the governing instrument under which the fiduciary is acting, section 3920 shall not be construed to require the personal representative or other concerned fiduciary to pay an estate, inheritance, or other death tax levied or assessed by a foreign country.

(2) The net amount of tax attributable to the interests encompassed by subdivision (a), subdivision (b), or subdivision (c) of section 3920(1) considered separately shall be the part of the net amount of tax as finally determined, with any interest and penalties on that amount, as the value of the interests generating the tax and included in the subdivision bears to the amount of the net estate. However, for an inheritance or similar tax, the tax that is imposed on each beneficiary's interest, as determined under the law of the state, country, or political subdivision then under consideration, shall be considered the tax attributable to the interest. In prorating taxes within each subdivision of section 3920(1) based on the value of those interests generating the tax, each separate tax that an interest may incur shall be prorated in the same manner. In determining the proportion that each interest bears to the total value of all interests generating each tax, only interests generating that particular tax are considered. Property or interests generating a tax do not include property or interests, whether passing under a will, trust, or otherwise, to the extent the property or interest is exempt or is initially deductible from the gross estate, without regard to any subsequent diminution of the deduction by reason of the charge of a part of the tax to the property or interest.

(3) A direction in a governing instrument for tax allocation and payment in a manner different from that provided in sections 3920 to 3923 is effective to allocate and pay tax only from property whose devolution is subject to that instrument's control and with respect to which the tax is being levied. If the governing instrument was signed on or after September 6, 1963 and before April 1, 2000 and directs apportionment of taxes by reference to the uniform estate tax apportionment act, which was former 1963 PA 144, or by reference to another law of this state that was in effect when the instrument was executed, the apportionment rules provided in the referenced law control the apportionment of taxes under that governing instrument.

(4) A direction to allocate and pay tax contained in a will is effective to allocate and pay tax even if the will does not control the devolution of property at death with respect to which the tax is being levied, including a direction in a will to allocate and pay tax from a trust of which the testator was the settlor and that was revocable by the settlor, or would have been revocable if the settlor was not incapacitated, until the settlor's death. If there is a conflict between directions in a will to allocate and pay tax and the terms of another governing instrument, the directions in the will control.

(5) A tax apportionment based on the net estate under sections 3920 to 3923 shall be determined without regard to a diminution in deductions resulting from the charge of a part of the tax to a deductible interest.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

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