

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

700.3922 Credit for foreign tax paid; payment and recovery of tax; delayed distribution; court determination of apportionment.

Sec. 3922.

(1) Unless the governing instrument provides otherwise, if a credit is given under the United States estate tax laws for a tax paid to another country or a political subdivision, the credit shall be apportioned under sections 3920 to 3923 among the recipients or interests finally charged with the payment of the foreign tax in reduction of a United States estate tax chargeable to the recipients or interests, whether or not the United States estate tax is attributable to the foreign interests. An excess of the credit shall be applied in reduction of the part of United States estate tax chargeable to the residue, and an excess of the credit over the United States estate tax chargeable to the residue shall be apportioned pro rata among those persons or interests finally charged with the balance of the payment of United States estate tax.

(2) Unless otherwise directed by the governing instrument, the personal representative shall pay the tax out of the estate, or if a personal representative is not acting under appointment, a person receiving or holding an interest generating the tax shall pay the tax. In a case in which property required to be included in the gross estate does not come into the personal representative's possession, the personal representative shall recover from the following persons the proportionate amount of tax chargeable to them under this act:

(a) From the fiduciary in possession of the trust principal or of property subject to the power of appointment in cases in which inter vivos trust property or property subject to a power of appointment is included in the gross estate.

(b) In all other cases, from the recipients or beneficiaries of property or interests with respect to which the tax is levied or assessed.

(3) Subsection (2) does not authorize the recovery of taxes from a company issuing insurance included in the gross estate, or from a bank, trust company, savings and loan association, or similar institution with respect to an account in the name of the decedent and another person that passed by operation of law on the decedent's death. If the fiduciary brings an action to recover a share of tax apportioned to an interest not within the fiduciary's control, the judgment that the fiduciary obtains may include costs and reasonable attorney fees.

(4) A personal representative or other fiduciary is not required to transfer property until the amount of a tax due from the transferee is paid or, if apportionment of the tax has not been determined, until adequate security is furnished for the payment. The fiduciary is not required to distribute property that the fiduciary reasonably anticipates may be necessary to pay a state or federal tax and related interest or penalties.

(5) On petition of the person required to pay a tax, the probate court having jurisdiction over the administration of a decedent's estate may determine the apportionment of the tax. If there are no probate proceedings, on the petition of a person required to pay a tax, the probate court of the county where the decedent was domiciled at death shall determine the apportionment of the tax.

History: 1998, Act 386, Iff. Apr. 1, 2000

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