

CHAPTER 184

PROBATE, TRUSTS, AND FIDUCIARIES

SENATE BILL 11-165

BY SENATOR(S) Guzman, Brophy;
also REPRESENTATIVE(S) Kerr A., Hullinghorst, Levy, Court, Fields, Fischer, Gardner B., Labuda, Miklosi, Pabon, Schafer S.,
Wilson.

AN ACT

CONCERNING THE "COLORADO UNIFORM ESTATE TAX APPORTIONMENT ACT".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 12 of title 15, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 14
COLORADO UNIFORM ESTATE TAX
APPORTIONMENT ACT

15-12-1401. Short title. THIS PART 14 SHALL BE KNOWN AND MAY BE CITED AS THE "COLORADO UNIFORM ESTATE TAX APPORTIONMENT ACT".

15-12-1402. Definitions. AS USED IN THIS PART 14, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "APPORTIONABLE ESTATE" MEANS THE VALUE OF THE GROSS ESTATE AS FINALLY DETERMINED FOR PURPOSES OF THE ESTATE TAX TO BE APPORTIONED, REDUCED BY:

(a) ANY CLAIM OR EXPENSE ALLOWABLE AS A DEDUCTION FOR PURPOSES OF THE ESTATE TAX;

(b) THE VALUE OF ANY INTEREST IN PROPERTY THAT, FOR PURPOSES OF THE ESTATE TAX, QUALIFIES FOR A MARITAL OR CHARITABLE DEDUCTION OR IS OTHERWISE DEDUCTIBLE OR EXEMPT; AND

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(c) ANY AMOUNT ADDED TO THE DECEDENT'S GROSS ESTATE BECAUSE OF A GIFT TAX ON TRANSFERS MADE BEFORE DEATH.

(2) "APPORTIONMENT PROVISION" MEANS ANY PROVISION OF A DISPOSITIVE INSTRUMENT HAVING THE EFFECT OF ALLOCATING ESTATE TAX TO CERTAIN PROPERTY OR RECIPIENTS, OR EXONERATING CERTAIN PROPERTY OR RECIPIENTS FROM LIABILITY FOR ESTATE TAX. AN APPORTIONMENT PROVISION MAY INCLUDE, BUT IS NOT EQUIVALENT TO, A PROVISION AFFECTING RIGHTS OF RECOVERY OR REIMBURSEMENT UNDER FEDERAL ESTATE TAX LAW.

(3) "ESTATE TAX" MEANS A FEDERAL, STATE, OR FOREIGN TAX IMPOSED BECAUSE OF THE DEATH OF AN INDIVIDUAL AND INTEREST AND PENALTIES ASSOCIATED WITH THE TAX. THE TERM DOES NOT INCLUDE AN INHERITANCE TAX, INCOME TAX, OR GENERATION-SKIPPING TRANSFER TAX OTHER THAN A GENERATION-SKIPPING TRANSFER TAX INCURRED ON A DIRECT SKIP TAKING EFFECT ON DEATH.

(4) "GROSS ESTATE" MEANS, WITH RESPECT TO AN ESTATE TAX, ALL INTERESTS IN PROPERTY SUBJECT TO THE ESTATE TAX.

(5) "PERSON" HAS THE SAME MEANING AS SET FORTH IN SECTION 15-10-201 (38).

(6) "RATABLE" MEANS APPORTIONED OR ALLOCATED PRO RATA ACCORDING TO THE RELATIVE VALUES OF INTERESTS TO WHICH THE TERM IS TO BE APPLIED. "RATABLY" HAS A CORRESPONDING MEANING.

(7) "TIME-LIMITED INTEREST" MEANS AN INTEREST IN PROPERTY THAT TERMINATES ON A LAPSE OF TIME OR ON THE OCCURRENCE OR NONOCCURRENCE OF AN EVENT OR THAT IS SUBJECT TO THE EXERCISE OF DISCRETION THAT COULD TRANSFER A BENEFICIAL INTEREST TO ANOTHER PERSON. THE TERM DOES NOT INCLUDE A COTENANCY UNLESS THE COTENANCY ITSELF IS A TIME-LIMITED INTEREST.

(8) "VALUE" MEANS, WITH RESPECT TO AN INTEREST IN PROPERTY, FAIR MARKET VALUE AS FINALLY DETERMINED FOR PURPOSES OF THE ESTATE TAX THAT IS TO BE APPORTIONED, REDUCED BY ANY OUTSTANDING DEBT SECURED BY THE INTEREST WITHOUT REDUCTION FOR TAXES PAID OR REQUIRED TO BE PAID OR FOR ANY SPECIAL VALUATION ADJUSTMENT.

15-12-1403. Apportionment by will or other dispositive instrument.

(1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS SECTION, THE FOLLOWING RULES APPLY:

(a) TO THE EXTENT THAT A PROVISION OF A DECEDENT'S WILL EXPRESSLY AND UNAMBIGUOUSLY DIRECTS THE APPORTIONMENT OF AN ESTATE TAX, THE TAX SHALL BE APPORTIONED ACCORDINGLY.

(b) ANY PORTION OF AN ESTATE TAX NOT APPORTIONED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL BE APPORTIONED IN ACCORDANCE WITH ANY PROVISION OF A REVOCABLE TRUST OF WHICH THE DECEDENT WAS THE SETTLOR THAT EXPRESSLY AND UNAMBIGUOUSLY DIRECTS THE APPORTIONMENT OF AN ESTATE TAX. IF CONFLICTING APPORTIONMENT PROVISIONS APPEAR IN TWO OR

MORE REVOCABLE TRUST INSTRUMENTS, THE PROVISION IN THE MOST RECENTLY DATED INSTRUMENT PREVAILS. FOR PURPOSES OF THIS PARAGRAPH (b):

(I) A TRUST IS REVOCABLE IF IT WAS REVOCABLE IMMEDIATELY AFTER THE TRUST INSTRUMENT WAS EXECUTED, EVEN IF THE TRUST SUBSEQUENTLY BECOMES IRREVOCABLE; AND

(II) THE DATE OF AN AMENDMENT TO A REVOCABLE TRUST INSTRUMENT IS THE DATE OF THE AMENDED INSTRUMENT ONLY IF THE AMENDMENT CONTAINS AN APPORTIONMENT PROVISION.

(c) IF ANY PORTION OF AN ESTATE TAX IS NOT APPORTIONED PURSUANT TO PARAGRAPH (a) OR (b) OF THIS SUBSECTION (1), AND A PROVISION IN ANY OTHER DISPOSITIVE INSTRUMENT EXPRESSLY AND UNAMBIGUOUSLY DIRECTS THAT ANY INTEREST IN THE PROPERTY DISPOSED OF BY THE INSTRUMENT IS OR IS NOT TO BE APPLIED TO THE PAYMENT OF THE ESTATE TAX ATTRIBUTABLE TO THE INTEREST DISPOSED OF BY THE INSTRUMENT, THE PROVISION CONTROLS THE APPORTIONMENT OF THE TAX TO THAT INTEREST.

(2) SUBJECT TO SUBSECTIONS (3) AND (4) OF THIS SECTION, AND UNLESS THE DECEDENT EXPRESSLY AND UNAMBIGUOUSLY DIRECTS TO THE CONTRARY, THE FOLLOWING RULES APPLY:

(a) IF AN APPORTIONMENT PROVISION SPECIFICALLY DIRECTS THAT A PERSON RECEIVING AN INTEREST IN A PROPERTY UNDER AN INSTRUMENT IS TO BE EXONERATED FROM THE RESPONSIBILITY TO PAY AN ESTATE TAX THAT WOULD OTHERWISE BE APPORTIONED THE INTEREST:

(I) THE TAX ATTRIBUTABLE TO THE EXONERATED INTEREST SHALL BE APPORTIONED AMONG OTHER PERSONS RECEIVING INTERESTS IN THE APPORTIONABLE ESTATE PASSING UNDER THE SAME INSTRUMENT; OR

(II) THE DEFICIENCY SHALL BE APPORTIONED RATABLY AMONG OTHER PERSONS RECEIVING INTERESTS IN THE APPORTIONABLE ESTATE THAT ARE NOT EXONERATED FROM APPORTIONMENT OF THE TAX IF THE VALUES OF THE OTHER INTERESTS ARE LESS THAN THE TAX ATTRIBUTABLE TO THE EXONERATED INTEREST.

(b) IF AN APPORTIONMENT PROVISION DIRECTS THAT AN ESTATE TAX IS TO BE APPORTIONED TO A SPECIFIC INTEREST IN PROPERTY, RECIPIENTS OF OTHER INTERESTS IN THE APPORTIONABLE ESTATE ARE INDIRECTLY EXONERATED FROM THE RESPONSIBILITY TO PAY SUCH TAX; HOWEVER, SUCH INDIRECT EXONERATION DOES NOT PRECLUDE THE APPLICATION OF SECTION 15-12-1404 IF THE VALUE OF THE INTEREST TO WHICH THE TAX IS APPORTIONED IS INSUFFICIENT TO PAY THE TAX IN FULL.

(c) IF AN APPORTIONMENT PROVISION DIRECTS THAT AN ESTATE TAX IS TO BE APPORTIONED TO A SPECIFIC INTEREST IN PROPERTY, A PORTION OF WHICH QUALIFIES FOR A MARITAL OR CHARITABLE DEDUCTION, THE ESTATE TAX SHALL FIRST BE APPORTIONED RATABLY AMONG THE HOLDERS OF THE PORTION THAT DOES NOT QUALIFY FOR A MARITAL OR CHARITABLE DEDUCTION AND THEN APPORTIONED RATABLY AMONG THE HOLDERS OF THE DEDUCTIBLE PORTION TO THE EXTENT THAT

THE VALUE OF THE NONDEDUCTIBLE PORTION IS INSUFFICIENT.

(d) EXCEPT AS OTHERWISE PROVIDED FOR IN PARAGRAPH (e) OF THIS SUBSECTION (2), IF AN APPORTIONMENT PROVISION DIRECTS THAT AN ESTATE TAX BE APPORTIONED TO PROPERTY IN WHICH ONE OR MORE TIME-LIMITED INTERESTS EXIST, OTHER THAN INTERESTS IN SPECIFIED PROPERTY UNDER SECTION 15-12-1407, THE TAX SHALL BE APPORTIONED TO THE PRINCIPAL OF THAT PROPERTY, REGARDLESS OF THE DEDUCTIBILITY OF SOME OF THE INTERESTS IN THAT PROPERTY.

(e) IF AN APPORTIONMENT PROVISION DIRECTS THAT AN ESTATE TAX IS TO BE APPORTIONED TO THE HOLDERS OF INTERESTS IN PROPERTY IN WHICH ONE OR MORE TIME-LIMITED INTERESTS EXIST AND A CHARITY HAS AN INTEREST THAT OTHERWISE QUALIFIES FOR AN ESTATE TAX CHARITABLE DEDUCTION, THE TAX SHALL FIRST BE APPORTIONED, TO THE EXTENT FEASIBLE, TO INTERESTS IN PROPERTY THAT HAVE NOT BEEN DISTRIBUTED TO PERSONS ENTITLED TO RECEIVE THE INTERESTS.

(3) A PROVISION THAT APPORTIONS AN ESTATE TAX IS INEFFECTIVE TO THE EXTENT THAT IT INCREASES THE TAX APPORTIONED TO A PERSON HAVING AN INTEREST IN THE GROSS ESTATE OVER WHICH THE DECEDENT HAS NO POWER TO TRANSFER IMMEDIATELY BEFORE THE DECEDENT EXECUTED THE INSTRUMENT IN WHICH THE APPORTIONMENT DIRECTION WAS MADE. FOR PURPOSES OF THIS SUBSECTION (3), A TESTAMENTARY POWER OF APPOINTMENT IS A POWER TO TRANSFER THE PROPERTY THAT IS SUBJECT TO THE POWER.

(4) AN APPORTIONMENT PROVISION EXPRESSLY DIRECTING ESTATE TAXES TO BE PAID FROM THE "RESIDUE" OF THE SUBJECT PROBATE OR TRUST ESTATE, OR USING LANGUAGE OF SIMILAR EFFECT, SHALL BE SUBJECT TO THE FOLLOWING CONSTRUCTION:

(a) IF THE GROSS ESTATE INCLUDES ASSETS NOT PASSING UNDER THE DISPOSITIVE INSTRUMENT AND THE BENEFICIARIES OF THOSE ASSETS AND THE BENEFICIARIES OF THE RESIDUE ARE DIFFERENT PERSONS, THIS PART 14 SHALL APPLY UNLESS THERE IS AN EXPRESS AND UNAMBIGUOUS STATEMENT THAT THE ESTATE TAX ATTRIBUTABLE TO THE ASSETS SHALL ALSO BE PAID FROM THE RESIDUE.

(b) IF THE DISPOSITIVE INSTRUMENT CONTAINS PRE-RESIDUARY GIFTS AND THE RESIDUARY ESTATE IS INSUFFICIENT TO PAY ALL ESTATE TAXES DUE, THE APPORTIONMENT PROVISION DIRECTING PAYMENT FROM THE RESIDUE SHALL BE EFFECTIVE WITH RESPECT TO THE RESIDUE AS PROVIDED FOR PURSUANT TO PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION, AND THIS PART 14 SHALL APPLY ONLY TO SPECIFY THE SOURCE OF PAYMENT FOR ESTATE TAX THAT CANNOT BE PAID FROM THE RESIDUE. IN THIS EVENT, NEITHER SECTION 15-12-902 NOR ANY OTHER STATUTORY OR COMMON LAW RULE OF ABATEMENT SHALL AFFECT THE APPORTIONMENT OF ESTATE TAX AMONG THE PRE-RESIDUARY GIFTS.

(c) WHEN A GIFT QUALIFYING FOR AN ESTATE TAX MARITAL OR CHARITABLE DEDUCTION IS MADE FROM A PORTION OF THE RESIDUE, THE PROVISIONS OF PARAGRAPH (c) OF SUBSECTION (2) OF THIS SECTION SHALL APPLY, UNLESS THERE IS AN EXPRESS AND UNAMBIGUOUS STATEMENT IN THE DISPOSITIVE INSTRUMENT OF AN INTENT TO NOT FULLY UTILIZE THE AVAILABLE MARITAL OR CHARITABLE DEDUCTION. FOR THIS PURPOSE, A DIRECTION TO PAY ESTATE TAX FROM THE

RESIDUE WITHOUT "APPORTIONMENT" OR "RIGHT OF CONTRIBUTION", OR LANGUAGE OF SIMILAR EFFECT, DOES NOT CONSTITUTE AN EXPRESS AND UNAMBIGUOUS STATEMENT SUFFICIENT TO AVOID THE APPLICATION OF PARAGRAPH (c) OF SUBSECTION (2) OF THIS SECTION.

(5) AN EXPRESS AND UNAMBIGUOUS APPORTIONMENT OF ESTATE TAX PURSUANT TO THIS SECTION DOES NOT, BY ITSELF, AFFECT RIGHTS OF RECOVERY THAT MAY BE AVAILABLE TO A FIDUCIARY UNDER FEDERAL TAX LAW. AN INTENT TO WAIVE A RIGHT OF RECOVERY PROVIDED IN SECTIONS 2206, 2207, 2207A, AND 2207B OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, SHALL BE EXPRESSLY STATED IN THE DISPOSITIVE INSTRUMENT IN THE MANNER DESCRIBED IN SUCH SECTIONS.

15-12-1404. Statutory apportionment of estate taxes. (1) TO THE EXTENT THAT APPORTIONMENT OF AN ESTATE TAX IS NOT CONTROLLED BY AN INSTRUMENT DESCRIBED IN SECTION 15-12-1403, AND EXCEPT AS OTHERWISE PROVIDED FOR IN SECTIONS 15-12-1406 AND 15-12-1407, THE FOLLOWING RULES APPLY:

(a) SUBJECT TO PARAGRAPHS (b) TO (d) OF THIS SUBSECTION (1), THE ESTATE TAX SHALL BE APPORTIONED RATABLY TO EACH PERSON THAT HAS AN INTEREST IN THE APPORTIONABLE ESTATE.

(b) A GENERATION-SKIPPING TRANSFER TAX INCURRED ON A DIRECT SKIP TAKING EFFECT AT DEATH SHALL BE CHARGED TO THE PERSON TO WHICH THE INTEREST IN PROPERTY IS TRANSFERRED.

(c) IF PROPERTY IS INCLUDED IN THE DECEDENT'S GROSS ESTATE BECAUSE OF SECTION 2044 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, OR ANY SIMILAR ESTATE TAX PROVISION, THE DIFFERENCE BETWEEN THE TOTAL ESTATE TAX FOR WHICH THE DECEDENT'S ESTATE IS LIABLE AND THE AMOUNT OF ESTATE TAX FOR WHICH THE DECEDENT'S ESTATE WOULD HAVE BEEN LIABLE IF THE PROPERTY HAD NOT BEEN INCLUDED IN THE DECEDENT'S GROSS ESTATE SHALL BE APPORTIONED RATABLY AMONG THE HOLDERS OF INTERESTS IN THE PROPERTY. THE BALANCE OF THE TAX, IF ANY, SHALL BE APPORTIONED RATABLY TO EACH OTHER PERSON HAVING AN INTEREST IN THE APPORTIONABLE ESTATE.

(d) EXCEPT AS OTHERWISE PROVIDED FOR IN SECTION 15-12-1403 (2) (d), AND EXCEPT AS TO PROPERTY TO WHICH SECTION 15-12-1407 APPLIES, AN ESTATE TAX APPORTIONED TO PERSONS HOLDING INTERESTS IN PROPERTY SUBJECT TO A TIME-LIMITED INTEREST SHALL BE APPORTIONED, WITHOUT FURTHER APPORTIONMENT, TO THE PRINCIPAL OF THAT PROPERTY.

15-12-1405. Credits and deferrals. (1) EXCEPT AS OTHERWISE PROVIDED FOR IN SECTIONS 15-12-1406 AND 15-12-1407, THE FOLLOWING RULES APPLY TO CREDITS AND DEFERRALS OF ESTATE TAXES:

(a) A CREDIT RESULTING FROM THE PAYMENT OF GIFT TAXES OR FROM ESTATE TAXES PAID ON PROPERTY PREVIOUSLY TAXED INURES RATABLY TO THE BENEFIT OF ALL PERSONS TO WHICH THE ESTATE TAX IS APPORTIONED.

(b) A CREDIT FOR STATE OR FOREIGN ESTATE TAXES INURES RATABLY TO THE BENEFIT OF ALL PERSONS TO WHICH THE ESTATE TAX IS APPORTIONED, EXCEPT THAT

THE AMOUNT OF CREDIT FOR A STATE OR FOREIGN TAX PAID BY A BENEFICIARY OF THE PROPERTY ON WHICH THE STATE OR FOREIGN TAX WAS IMPOSED, DIRECTLY OR BY A CHARGE AGAINST THE PROPERTY, INURES TO THE BENEFIT OF THE BENEFICIARY.

(c) IF PAYMENT OF A PORTION OF AN ESTATE TAX IS DEFERRED BECAUSE OF THE INCLUSION IN THE GROSS ESTATE OF A PARTICULAR INTEREST IN PROPERTY, THE BENEFIT OF THE DEFERRAL INURES RATABLY TO THE PERSONS TO WHOM THE ESTATE TAX ATTRIBUTABLE TO THE INTEREST IS APPORTIONED. THE BURDEN OF ANY INTEREST CHARGES INCURRED ON A DEFERRAL OF TAXES AND THE BENEFIT OF ANY TAX DEDUCTION ASSOCIATED WITH THE ACCRUAL OR PAYMENT OF THE INTEREST CHARGE IS ALLOCATED RATABLY AMONG THE PERSONS RECEIVING AN INTEREST IN THE PROPERTY.

15-12-1406. Insulated property, advancement of tax - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ADVANCED FRACTION" MEANS A FRACTION THAT HAS AS ITS NUMERATOR THE AMOUNT OF THE ADVANCED TAX AND AS ITS DENOMINATOR THE VALUE OF THE INTERESTS IN INSULATED PROPERTY TO WHICH THAT TAX IS ATTRIBUTABLE.

(b) "ADVANCED TAX" MEANS THE AGGREGATE AMOUNT OF ESTATE TAX ATTRIBUTABLE TO INTERESTS IN INSULATED PROPERTY THAT IS REQUIRED TO BE ADVANCED BY UNINSULATED HOLDERS UNDER SUBSECTION (3) OF THIS SECTION.

(c) "INSULATED PROPERTY" MEANS PROPERTY SUBJECT TO A TIME-LIMITED INTEREST THAT IS INCLUDED IN THE APPORTIONABLE ESTATE BUT IS UNAVAILABLE FOR PAYMENT OF AN ESTATE TAX BECAUSE OF IMPOSSIBILITY OR IMPRACTICABILITY.

(d) "UNINSULATED HOLDER" MEANS A PERSON WHO HAS AN INTEREST IN UNINSULATED PROPERTY.

(e) "UNINSULATED PROPERTY" MEANS PROPERTY INCLUDED IN THE APPORTIONABLE ESTATE, OTHER THAN INSULATED PROPERTY.

(2) IF ESTATE TAX IS TO BE ADVANCED PURSUANT TO SUBSECTION (3) OF THIS SECTION BY PERSONS HOLDING INTERESTS IN UNINSULATED PROPERTY SUBJECT TO A TIME-LIMITED INTEREST OTHER THAN PROPERTY TO WHICH SECTION 15-12-1407 APPLIES, THE ESTATE TAX SHALL BE ADVANCED, WITHOUT FURTHER APPORTIONMENT, FROM THE PRINCIPAL OF THE UNINSULATED PROPERTY.

(3) SUBJECT TO SECTIONS 15-12-1409 (2) AND 15-12-1409 (4), AN ESTATE TAX ATTRIBUTABLE TO INTERESTS IN INSULATED PROPERTY SHALL BE ADVANCED RATABLY BY UNINSULATED HOLDERS. IF THE VALUE OF AN INTEREST IN UNINSULATED PROPERTY IS LESS THAN THE AMOUNT OF ESTATE TAXES OTHERWISE REQUIRED TO BE ADVANCED BY THE HOLDER OF THAT INTEREST, THE DEFICIENCY SHALL BE ADVANCED RATABLY BY THE PERSON HOLDING INTERESTS IN ANY PROPERTY THAT IS EXCLUDED FROM THE APPORTIONABLE ESTATE AS DEFINED IN SECTION 15-12-1402 (1) (b) AS IF THOSE INTERESTS WERE IN UNINSULATED PROPERTY.

(4) A COURT HAVING JURISDICTION TO DETERMINE THE APPORTIONMENT OF AN

ESTATE TAX MAY REQUIRE A BENEFICIARY OF AN INTEREST IN INSULATED PROPERTY TO PAY ALL OR PART OF THE ESTATE TAX OTHERWISE APPORTIONED TO THE INTEREST IF THE COURT FINDS THAT IT WOULD BE SUBSTANTIALLY MORE EQUITABLE FOR THAT BENEFICIARY TO BEAR THE TAX LIABILITY PERSONALLY THAN FOR THAT PART OF THE TAX TO BE ADVANCED BY UNINSULATED HOLDERS.

(5) WHEN A DISTRIBUTION OF INSULATED PROPERTY IS MADE, EACH UNINSULATED HOLDER MAY RECOVER FROM THE DISTRIBUTE A RATABLE PORTION OF THE ADVANCED FRACTION OF THE PROPERTY DISTRIBUTED. TO THE EXTENT THAT UNDISTRIBUTED INSULATED PROPERTY CEASES TO BE INSULATED, EACH UNINSULATED HOLDER MAY RECOVER FROM THE PROPERTY A RATABLE PORTION OF THE ADVANCED FRACTION OF THE TOTAL UNINSULATED PROPERTY.

(6) UPON A DISTRIBUTION OF INSULATED PROPERTY FOR WHICH THE DISTRIBUTE BECOMES OBLIGATED TO MAKE A PAYMENT TO UNINSULATED HOLDERS PURSUANT TO SUBSECTION (4) OF THIS SECTION, A COURT MAY AWARD AN UNINSULATED HOLDER A RECORDABLE LIEN ON THE DISTRIBUTE'S PROPERTY TO SECURE THE DISTRIBUTE'S OBLIGATION TO THAT UNINSULATED HOLDER.

15-12-1407. Apportionment and recapture of special elective benefits.

(1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "SPECIAL ELECTIVE BENEFIT" MEANS A REDUCTION IN AN ESTATE TAX OBTAINED BY AN ELECTION FOR:

(I) A REDUCED VALUATION OF SPECIFIED PROPERTY THAT IS INCLUDED IN THE GROSS ESTATE;

(II) A DEDUCTION FROM THE GROSS ESTATE, OTHER THAN A MARITAL OR CHARITABLE DEDUCTION, ALLOWED FOR SPECIFIED PROPERTY; OR

(III) AN EXCLUSION FROM THE GROSS ESTATE OF SPECIFIED PROPERTY.

(b) "SPECIFIED PROPERTY" MEANS PROPERTY FOR WHICH AN ELECTION HAS BEEN MADE FOR A SPECIAL ELECTIVE BENEFIT.

(2) IF AN ELECTION IS MADE FOR ONE OR MORE SPECIAL ELECTIVE BENEFITS, AN INITIAL APPORTIONMENT OF A HYPOTHETICAL ESTATE TAX SHALL BE COMPUTED AS IF NO ELECTION FOR ANY OF SUCH BENEFITS HAD BEEN MADE. THE AGGREGATE REDUCTION IN ESTATE TAX RESULTING FROM ALL ELECTIONS MADE SHALL BE ALLOCATED AMONG HOLDERS OF INTERESTS IN THE SPECIFIED PROPERTY IN THE PROPORTION THAT THE AMOUNT OF DEDUCTION, REDUCED VALUATION, OR EXCLUSION ATTRIBUTABLE TO EACH HOLDER'S INTEREST BEARS TO THE AGGREGATE AMOUNT OF DEDUCTIONS, REDUCED VALUATIONS, AND EXCLUSIONS OBTAINED BY THE DECEDENT'S ESTATE FROM THE ELECTIONS. IF THE ESTATE TAX INITIALLY APPORTIONED TO THE HOLDER OF AN INTEREST IN SPECIFIED PROPERTY IS REDUCED TO ZERO, ANY EXCESS AMOUNT OF REDUCTION REDUCES RATABLY THE ESTATE TAX APPORTIONED TO OTHER PERSONS THAT RECEIVE INTERESTS IN THE APPORTIONABLE ESTATE.

(3) AN ADDITIONAL ESTATE TAX IMPOSED TO RECAPTURE ALL OR PART OF A

SPECIAL ELECTIVE BENEFIT SHALL BE CHARGED TO ANY PERSON WHO IS LIABLE FOR THE ADDITIONAL TAX PURSUANT TO THE LAW PROVIDING FOR THE RECAPTURE.

15-12-1408. Securing payment of estate tax from property in possession of fiduciary. (1) A FIDUCIARY MAY DEFER A DISTRIBUTION OF PROPERTY UNTIL THE FIDUCIARY IS SATISFIED THAT ADEQUATE PROVISION FOR PAYMENT OF THE ESTATE TAX HAS BEEN MADE.

(2) A FIDUCIARY MAY WITHHOLD FROM A DISTRIBUTE AN AMOUNT EQUAL TO THE AMOUNT OF ESTATE TAX APPORTIONED TO AN INTEREST OF THE DISTRIBUTE.

(3) AS A CONDITION TO A DISTRIBUTION, A FIDUCIARY MAY REQUIRE THE DISTRIBUTE TO PROVIDE A BOND OR OTHER SECURITY FOR THE PORTION OF THE ESTATE TAX APPORTIONED TO THE DISTRIBUTE.

15-12-1409. Collection of estate tax by fiduciary. (1) A FIDUCIARY RESPONSIBLE FOR PAYMENT OF AN ESTATE TAX MAY COLLECT FROM ANY PERSON THE TAX APPORTIONED TO AND THE TAX REQUIRED TO BE ADVANCED BY THAT PERSON.

(2) EXCEPT AS OTHERWISE PROVIDED FOR IN SECTION 15-12-1406, ANY ESTATE TAX DUE FROM A PERSON THAT CANNOT BE COLLECTED FROM THAT PERSON MAY BE COLLECTED BY THE FIDUCIARY FROM OTHER PERSONS IN THE FOLLOWING ORDER OF PRIORITY:

(a) A PERSON HAVING AN INTEREST IN THE APPORTIONABLE ESTATE THAT IS NOT EXONERATED FROM THE TAX;

(b) ANY OTHER PERSON HAVING AN INTEREST IN THE APPORTIONABLE ESTATE;
AND

(c) A PERSON HAVING AN INTEREST IN THE GROSS ESTATE.

(3) A DOMICILIARY FIDUCIARY MAY RECOVER FROM AN ANCILLARY PERSONAL REPRESENTATIVE THE ESTATE TAX APPORTIONED TO THE PROPERTY CONTROLLED BY THE ANCILLARY PERSONAL REPRESENTATIVE.

(4) THE TOTAL TAX COLLECTED FROM A PERSON PURSUANT TO THIS PART 14 MAY NOT EXCEED THE VALUE OF THAT PERSON'S INTEREST.

15-12-1410. Right of reimbursement. (1) A PERSON REQUIRED PURSUANT TO SECTION 15-12-1409 TO PAY AN ESTATE TAX GREATER THAN THE AMOUNT DUE FROM THE PERSON PURSUANT TO SECTIONS 15-12-1403 AND 15-12-1404 HAS A RIGHT TO REIMBURSEMENT FROM ANOTHER PERSON TO THE EXTENT THAT THE OTHER PERSON HAS NOT PAID THE TAX REQUIRED BY SECTIONS 15-12-1403 AND 15-12-1404 AND A RIGHT TO REIMBURSEMENT RATABLY FROM OTHER PERSONS TO THE EXTENT THAT EACH HAS NOT CONTRIBUTED A PORTION OF THE AMOUNT COLLECTED PURSUANT TO SECTION 15-12-1409 (2).

(2) A FIDUCIARY MAY ENFORCE THE RIGHT OF REIMBURSEMENT UNDER SUBSECTION (1) OF THIS SECTION ON BEHALF OF THE PERSON THAT IS ENTITLED TO

THE REIMBURSEMENT AND SHALL TAKE REASONABLE STEPS TO DO SO IF SO REQUESTED BY THE PERSON.

15-12-1411. Action to determine or enforce part. A FIDUCIARY, TRANSFEREE, OR BENEFICIARY OF THE GROSS ESTATE MAY MAINTAIN AN ACTION FOR DECLARATORY JUDGMENT TO HAVE A COURT DETERMINE AND ENFORCE THIS PART 14.

15-12-1412. Uniformity of application and construction. IN APPLYING AND CONSTRUING THIS PART 14, CONSIDERATION SHALL BE GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

15-12-1413. Severability. IF ANY PROVISION OF THIS PART 14 OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS PART 14 THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS PART 14 ARE SEVERABLE.

15-12-1414. Delayed application. (1) SECTIONS 15-12-1403 TO 15-12-1407 SHALL NOT APPLY TO THE ESTATE OF A DECEDENT WHO DIES ON OR WITHIN THREE YEARS AFTER THE EFFECTIVE DATE OF THIS PART 14, NOR TO THE ESTATE OF A DECEDENT WHO DIES MORE THAN THREE YEARS AFTER THE EFFECTIVE DATE OF THIS PART 14 IF THE DECEDENT CONTINUOUSLY LACKED TESTAMENTARY CAPACITY FROM THE EXPIRATION OF THE THREE-YEAR PERIOD AFTER THE EFFECTIVE DATE OF THIS PART 14 UNTIL THE DATE OF DEATH.

(2) FOR THE ESTATE OF A DECEDENT WHO DIES ON OR AFTER THE EFFECTIVE DATE OF THIS PART 14 TO WHICH SECTIONS 15-12-1403 TO 15-12-1407 DO NOT APPLY, ESTATE TAXES SHALL BE APPORTIONED PURSUANT TO THE LAW IN EFFECT IMMEDIATELY BEFORE THE EFFECTIVE DATE OF THIS PART 14.

(3) THE PROVISIONS OF THIS PART 14 MAY BE ADOPTED AS APPLICABLE LAW IN A GOVERNING INSTRUMENT AT ANY TIME ON OR AFTER THE EFFECTIVE DATE OF THIS PART 14. THE PROVISIONS OF THIS PART 14 MAY BE INCORPORATED BY REFERENCE, IN WHOLE OR IN PART, INTO A GOVERNING INSTRUMENT AT ANY TIME.

SECTION 2. Inclusion of official comments. There shall be included in the publication of the "Colorado Uniform Estate Tax Apportionment Act", as nonstatutory matter, following each section of the part, the full text of the official comments to that section contained in the official volume containing the 2003 official text of the "Uniform Estate Tax Apportionment Act" issued by the national conference of commissioners on uniform state laws, with any changes in the official comments or Colorado comments to correspond to Colorado changes in the uniform act. The revisor of statutes shall prepare the comments for approval by the committee on legal services for publication.

SECTION 3. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a referendum petition is filed pursuant to section

1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2012 and shall take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 19, 2011