

CHAPTER 2015-27

Committee Substitute for Committee Substitute for Senate Bill No. 872

An act relating to estates; amending s. 733.106, F.S.; authorizing the court, if costs and attorney fees are to be paid from the estate under specified sections of law, to direct payment from a certain part of the estate or, under specified circumstances, to direct payment from a trust; authorizing costs and fees to be assessed against one or more persons' part of the trust in such proportions as the court finds just and proper; specifying factors that the court may consider in directing the assessment of such costs and fees; authorizing a court to assess costs and fees without finding that the person engaged in specified wrongful acts; amending s. 733.212, F.S.; revising the required content for a notice of administration; revising provisions that require an interested person, who has been served a notice of administration, to file specified objections in an estate matter within 3 months after service of such notice; providing that the 3-month period may only be extended for certain estoppel; providing that objections that are not barred by the 3-month period must be filed no later than a specified date; deleting references to objections based upon the qualifications of a personal representative; amending s. 733.2123, F.S.; conforming provisions to changes made by the act; amending s. 733.3101, F.S.; requiring a personal representative to resign immediately if he or she knows that he or she was not qualified to act at the time of appointment; requiring a personal representative who was qualified to act at such appointment to file a notice if no longer qualified; authorizing an interested person within a specified period to request the removal of a personal representative who files such notice; providing that a personal representative is liable for costs and attorney fees incurred in a removal proceeding if he or she is removed and should have known of the facts supporting the removal; defining the term "qualified"; amending s. 733.504, F.S.; requiring a personal representative to be removed and the letters of administration revoked if he or she was not qualified to act at the time of appointment; amending s. 733.817, F.S.; defining and redefining terms; deleting a provision that exempts an interest in protected homestead from the apportionment of taxes; providing for the payment of taxes on protected homestead family allowance and exempt property by certain other property to the extent such other property is sufficient; revising the allocation of taxes; revising the apportionment of the net tax attributable to specified interests; authorizing a court to assess liability in an equitable manner under certain circumstances; providing that a governing instrument may not direct that taxes be paid from property other than property passing under the governing instrument, except under specified conditions; requiring that direction in a governing instrument be express to apportion taxes under certain circumstances; requiring that the right of recovery provided in the Internal Revenue Code for certain taxes be expressly waived in the decedent's will or revocable trust with certain specificity; specifying the

property upon which certain tax is imposed for allocation and apportionment of certain tax; providing that a general statement in the decedent's will or revocable trust waiving all rights of reimbursement or recovery under the Internal Revenue Code is not an express waiver of certain rights of recovery; requiring direction to specifically reference the generation-skipping transfer tax imposed by the Internal Revenue Code to direct its apportionment; authorizing, under certain circumstances, the decedent to direct by will the amount of net tax attributable to property over which the decedent held a general power of appointment under certain circumstances; providing that an express direction in a revocable trust is deemed to be a direction contained in the decedent's will as well as the revocable trust under certain circumstances; providing that an express direction in the decedent's will to pay tax from the decedent's revocable trust by specific reference to the revocable trust is effective unless a contrary express direction is contained in the revocable trust; revising the resolution of conflicting directions in governing instruments with regard to payment of taxes; providing that the later express direction in the will or other governing instrument controls; providing that the date of an amendment to a will or other governing instrument is the date of the will or trust for conflict resolution only if the codicil or amendment contains an express tax apportionment provision or an express modification of the tax apportionment provision; providing that a will is deemed executed after another governing instrument if the decedent's will and another governing instrument were executed on the same date; providing that an earlier conflicting governing instrument controls as to any tax remaining unpaid after the application of the later conflicting governing instrument; providing that a grant of permission or authority in a governing instrument to request payment of tax from property passing under another governing instrument is not a direction apportioning the tax to the property passing under the other governing instrument; providing a grant of permission or authority in a governing instrument to pay tax attributable to property not passing under the governing instrument is not a direction apportioning the tax to property passing under the governing instrument; providing application; prohibiting the requiring of a personal representative or fiduciary to transfer to a recipient property that may be used for payment of taxes; amending s. 736.1005, F.S.; authorizing the court, if attorney fees are to be paid from the trust under specified sections of law, to direct payment from a certain part of the trust; providing that fees may be assessed against one or more persons' part of the trust in such proportions as the court finds just and proper; specifying factors that the court may consider in directing the assessment of such fees; providing that a court may assess fees without finding that a person engaged specified wrongful acts; amending s. 736.1006, F.S.; authorizing the court, if costs are to be paid from the trust under specified sections of law, to direct payment from a certain part of the trust; providing that costs may be assessed against one or more persons' part of the trust in such proportions as the court finds just and proper; specifying factors that the court may consider in directing the assessment of such costs; providing that specified provisions of the act are remedial and intended to clarify existing law;

providing for retroactive and prospective application of specified portions of the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 733.106, Florida Statutes, is amended to read:

733.106 Costs and attorney ~~attorney's~~ fees.—

(1) In all probate proceedings, costs may be awarded as in chancery actions.

(2) A person nominated as personal representative, or any proponent of a will if the person so nominated does not act within a reasonable time, if in good faith justified in offering the will in due form for probate, shall receive costs and attorney ~~attorney's~~ fees from the estate even though probate is denied or revoked.

(3) Any attorney who has rendered services to an estate may be awarded reasonable compensation from the estate.

(4) ~~If~~ ~~When~~ costs and attorney ~~attorney's~~ fees are to be paid from the estate ~~under this section, s. 733.6171(4), s. 736.1005, or s. 736.1006, the court, in its discretion,~~ may direct from what part of the estate they shall be paid.

(a) If the court directs an assessment against a person's part of the estate and such part is insufficient to fully pay the assessment, the court may direct payment from the person's part of a trust, if any, if a pourover will is involved and the matter is interrelated with the trust.

(b) All or any part of the costs and attorney fees to be paid from the estate may be assessed against one or more persons' part of the estate in such proportions as the court finds to be just and proper.

(c) In the exercise of its discretion, the court may consider the following factors:

1. The relative impact of an assessment on the estimated value of each person's part of the estate.

2. The amount of costs and attorney fees to be assessed against a person's part of the estate.

3. The extent to which a person whose part of the estate is to be assessed, individually or through counsel, actively participated in the proceeding.

4. The potential benefit or detriment to a person's part of the estate expected from the outcome of the proceeding.

5. The relative strength or weakness of the merits of the claims, defenses, or objections, if any, asserted by a person whose part of the estate is to be assessed.

6. Whether a person whose part of the estate is to be assessed was a prevailing party with respect to one or more claims, defenses, or objections.

7. Whether a person whose part of the estate is to be assessed unjustly caused an increase in the amount of costs and attorney fees incurred by the personal representative or another interested person in connection with the proceeding.

8. Any other relevant fact, circumstance, or equity.

(d) The court may assess a person's part of the estate without finding that the person engaged in bad faith, wrongdoing, or frivolousness.

Section 2. Paragraph (c) of subsection (2) and subsection (3) of section 733.212, Florida Statutes, are amended to read:

733.212 Notice of administration; filing of objections.—

(2) The notice shall state:

(c) That any interested person on whom a copy of the notice of administration is served must file on or before the date that is 3 months after the date of service of a copy of the notice of administration on that person any objection that challenges the validity of the will, ~~the qualifications of the personal representative, the venue, or the jurisdiction of the court.~~ The 3-month time period may only be extended for estoppel based upon a misstatement by the personal representative regarding the time period within which an objection must be filed. The time period may not be extended for any other reason, including affirmative representation, failure to disclose information, or misconduct by the personal representative or any other person. Unless sooner barred by subsection (3), all objections to the validity of a will, venue, or the jurisdiction of the court must be filed no later than the earlier of the entry of an order of final discharge of the personal representative or 1 year after service of the notice of administration.

(3) Any interested person on whom a copy of the notice of administration is served must object to the validity of the will, ~~the qualifications of the personal representative, the venue, or the jurisdiction of the court~~ by filing a petition or other pleading requesting relief in accordance with the Florida Probate Rules on or before the date that is 3 months after the date of service of a copy of the notice of administration on the objecting person, or those objections are forever barred. The 3-month time period may only be extended for estoppel based upon a misstatement by the personal representative regarding the time period within which an objection must be filed. The time period may not be extended for any other reason, including affirmative representation, failure to disclose information, or misconduct by the personal representative or any other person. Unless sooner barred by this subsection,

all objections to the validity of a will, venue, or the jurisdiction of the court must be filed no later than the earlier of the entry of an order of final discharge of the personal representative or 1 year after service of the notice of administration.

Section 3. Section 733.2123, Florida Statutes, is amended to read:

733.2123 Adjudication before issuance of letters.—A petitioner may serve formal notice of the petition for administration on interested persons. A person who is served with such notice before the issuance of letters or who has waived notice may not challenge the validity of the will, testacy of the decedent, ~~qualifications of the personal representative,~~ venue, or jurisdiction of the court, except in the proceedings before issuance of letters.

Section 4. Section 733.3101, Florida Statutes, is amended to read:

733.3101 Personal representative not qualified.—

(1) A personal representative shall resign immediately if the personal representative knows that he or she was not qualified to act at the time of appointment.

(2) Any time a personal representative, who was qualified to act at the time of appointment, knows or should have known that he or she would not be qualified for appointment if application for appointment were then made, the personal representative shall promptly file and serve a notice setting forth the reasons. The personal representative's notice shall state that any interested person may petition to remove the personal representative. An interested person on whom a copy of the personal representative's notice is served may file a petition requesting the personal representative's removal within 30 days after the date on which such notice is served.

(3) A personal representative who fails to comply with this section shall be personally liable for costs, including attorney attorney's fees, incurred in any removal proceeding, if the personal representative is removed. This liability extends to a personal representative who does not know, but should have known, of the facts that would have required him or her to resign under subsection (1) or to file and serve notice under subsection (2). This liability shall be cumulative to any other provided by law.

(4) As used in this section, the term "qualified" means that the personal representative is qualified under ss. 733.302 -733.305.

Section 5. Section 733.504, Florida Statutes, is amended to read:

733.504 Removal of personal representative; causes for removal.—A personal representative shall be removed and the letters revoked if he or she was not qualified to act at the time of appointment. A personal representative may be removed and the letters revoked for any of the following causes, and the removal shall be in addition to any penalties prescribed by law:

- (1) Adjudication that the personal representative is incapacitated.
- (2) Physical or mental incapacity rendering the personal representative incapable of the discharge of his or her duties.
- (3) Failure to comply with any order of the court, unless the order has been superseded on appeal.
- (4) Failure to account for the sale of property or to produce and exhibit the assets of the estate when so required.
- (5) Wasting or maladministration of the estate.
- (6) Failure to give bond or security for any purpose.
- (7) Conviction of a felony.
- (8) Insolvency of, or the appointment of a receiver or liquidator for, any corporate personal representative.
- (9) Holding or acquiring conflicting or adverse interests against the estate that will or may interfere with the administration of the estate as a whole. This cause of removal shall not apply to the surviving spouse because of the exercise of the right to the elective share, family allowance, or exemptions, as provided elsewhere in this code.
- (10) Revocation of the probate of the decedent's will that authorized or designated the appointment of the personal representative.
- (11) Removal of domicile from Florida, if domicile was a requirement of initial appointment.
- (12) The personal representative was qualified to act at the time of appointment, but is would not now be entitled to appointment.

Removal under this section is in addition to any penalties prescribed by law.

Section 6. Section 733.817, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 733.817, F.S., for present text.)

733.817 Apportionment of estate taxes.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Fiduciary" means a person, other than the personal representative in possession of property included in the measure of the tax, who is liable to the applicable taxing authority for payment of the entire tax to the extent of the value of the property in possession.

(b) “Generation-skipping transfer tax” means the generation-skipping transfer tax imposed by chapter 13 of the Internal Revenue Code on direct skips of interests includible in the federal gross estate or a corresponding tax imposed by any state or country or political subdivision of the foregoing. The term does not include the generation-skipping transfer tax on taxable distributions, taxable terminations, or any other generation-skipping transfer. The terms “direct skip,” “taxable distribution,” and “taxable termination” have the same meanings as provided in s. 2612 of the Internal Revenue Code.

(c) “Governing instrument” means a will, trust instrument, or any other document that controls the transfer of property on the occurrence of the event with respect to which the tax is being levied.

(d) “Gross estate” means the gross estate, as determined by the Internal Revenue Code with respect to the federal estate tax and the Florida estate tax, and as that concept is otherwise determined by the estate, inheritance, or death tax laws of the particular state, country, or political subdivision whose tax is being apportioned.

(e) “Included in the measure of the tax” means for each separate tax that an interest may incur, only interests included in the measure of that particular tax are considered. As used in this section, the term does not include:

1. Any interest, whether passing under the will or not, to the extent the interest is initially deductible from the gross estate, without regard to any subsequent reduction of the deduction by reason of the charge of any part of the applicable tax to the interest. If an election is required for deductibility, an interest is not initially deductible unless the election for deductibility is allowed.

2. Interests or amounts that are not included in the gross estate but are included in the amount upon which the applicable tax is computed, such as adjusted taxable gifts pursuant to s. 2001 of the Internal Revenue Code.

3. Gift taxes included in the gross estate pursuant to s. 2035 of the Internal Revenue Code and the portion of any inter vivos transfer included in the gross estate pursuant to s. 529 of the Internal Revenue Code, notwithstanding inclusion in the gross estate.

(f) “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended.

(g) “Net tax” means the net tax payable to the particular state, country, or political subdivision whose tax is being apportioned, after taking into account all credits against the applicable tax except as provided in this section. With respect to the federal estate tax, net tax is determined after taking into account all credits against the tax except for the credit for foreign death taxes and except for the credit or deduction for state taxes imposed by states other than this state.

(h) “Nonresiduary devise” means any devise that is not a residuary devise.

(i) “Nonresiduary interest,” in connection with a trust, means any interest in a trust which is not a residuary interest.

(j) “Recipient” means, with respect to property or an interest in property included in the gross estate, an heir at law in an intestate estate, devisee in a testate estate, beneficiary of a trust, beneficiary of a life insurance policy, annuity, or other contractual right, surviving tenant, taker as a result of the exercise or in default of the exercise of a general power of appointment, person who receives or is to receive the property or an interest in the property, or person in possession of the property, other than a creditor.

(k) “Residuary devise” has the meaning in s. 731.201.

(l) “Residuary interest,” in connection with a trust, means an interest in the assets of a trust which remain after provision for any distribution that is to be satisfied by reference to a specific property or type of property, fund, sum, or statutory amount.

(m) “Revocable trust” means a trust as described in s. 733.707(3).

(n) “Section 2044 interest” means an interest included in the measure of the tax by reason of s. 2044 of the Internal Revenue Code.

(o) “State” means any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(p) “Tax” means any estate tax, inheritance tax, generation-skipping transfer tax, or other tax levied or assessed under the laws of this or any other state, the United States, any other country, or any political subdivision of the foregoing, as finally determined, which is imposed as a result of the death of the decedent. The term also includes any interest or penalties imposed in addition to the tax. Unless the context indicates otherwise, the term means each separate tax. The term does not include any additional estate tax imposed by s. 2032A(c) or s. 2057(f) of the Internal Revenue Code or a corresponding tax imposed by any state or country or political subdivision of the foregoing. The additional estate tax imposed shall be apportioned as provided in s. 2032A or s. 2057 of the Internal Revenue Code.

(q) “Temporary interest” means an interest in income or an estate for a specific period of time, for life, or for some other period controlled by reference to extrinsic events, whether or not in trust.

(r) “Tentative Florida tax” with respect to any property means the net Florida estate tax that would have been attributable to that property if no tax were payable to any other state in respect of that property.

(s) “Value” means the pecuniary worth of the interest involved as finally determined for purposes of the applicable tax after deducting any debt,

expense, or other deduction chargeable to it for which a deduction was allowed in determining the amount of the applicable tax. A lien or other encumbrance is not regarded as chargeable to a particular interest to the extent that it will be paid from other interests. The value of an interest is not reduced by reason of the charge against it of any part of the tax, except as provided in paragraph (3)(a).

(2) ALLOCATION OF TAX.—Except as effectively directed in the governing instrument pursuant to subsection (4), the net tax attributable to the interests included in the measure of each tax shall be determined by the proportion that the value of each interest included in the measure of the tax bears to the total value of all interests included in the measure of the tax. Notwithstanding the foregoing provision of this subsection and except as effectively directed in the governing instrument:

(a) The net tax attributable to section 2044 interests shall be determined in the manner provided for the federal estate tax in s. 2207A of the Internal Revenue Code, and the amount so determined shall be deducted from the tax to determine the net tax attributable to all other interests included in the measure of the tax.

(b) The foreign tax credit allowed with respect to the federal estate tax shall be allocated among the recipients of interests finally charged with the payment of the foreign tax in reduction of any federal estate tax chargeable to the recipients of the foreign interests, whether or not any federal estate tax is attributable to the foreign interests. Any excess of the foreign tax credit shall be applied to reduce proportionately the net amount of federal estate tax chargeable to the remaining recipients of the interests included in the measure of the federal estate tax.

(c) The reduction in the net tax attributable to the deduction for state death taxes allowed by s. 2058 of the Internal Revenue Code shall be allocated to the recipients of the interests that produced the deduction. For this purpose, the reduction in the net tax shall be calculated in the manner provided for interests other than those described in paragraph (a).

(d) The reduction in the Florida tax, if one is imposed, on the estate of a Florida resident for tax paid to another state shall be allocated as follows:

1. If the net tax paid to another state is greater than or equal to the tentative Florida tax attributable to the property subject to tax in the other state, none of the Florida tax shall be attributable to that property.

2. If the net tax paid to another state is less than the tentative Florida tax attributable to the property subject to tax in the other state, the net Florida tax attributable to the property subject to tax in the other state shall be the excess of the amount of the tentative Florida tax attributable to the property over the net tax payable to the other state with respect to the property.

3. Any remaining net Florida tax shall be attributable to property included in the measure of the Florida tax exclusive of the property subject to tax in another state.

4. The net federal tax attributable to the property subject to tax in the other state shall be determined as if the property were located in that state.

(e) The net tax attributable to a temporary interest, if any, is regarded as attributable to the principal that supports the temporary interest.

(3) APPORTIONMENT OF TAX.—Except as otherwise effectively directed in the governing instrument pursuant to subsection (4), the net tax attributable to each interest shall be apportioned as follows:

(a) Generation-skipping transfer tax.—Any federal or state generation-skipping transfer tax shall be apportioned as provided in s. 2603 of the Internal Revenue Code after the application of the remaining provisions of this subsection to taxes other than the generation-skipping transfer tax.

(b) Section 2044 interests.—The net tax attributable to section 2044 interests shall be apportioned among the recipients of the section 2044 interests in the proportion that the value of each section 2044 interest bears to the total of all section 2044 interests. The net tax apportioned by this paragraph to section 2044 interests that pass in the manner described in paragraph (c) or paragraph (d) shall be apportioned to the section 2044 interests in the manner described in those paragraphs before the apportionment of the net tax attributable to the other interests passing as provided in those paragraphs. The net tax attributable to the interests other than the section 2044 interests which pass in the manner described in paragraph (c) or paragraph (d) shall be apportioned only to such other interests pursuant to those paragraphs.

(c) Wills.—The net tax attributable to property passing under the decedent's will shall be apportioned in the following order of priority:

1. The net tax attributable to nonresiduary devisees shall be charged to and paid from the residuary estate, whether or not all interests in the residuary estate are included in the measure of the tax. If the residuary estate is insufficient to pay the net tax attributable to all nonresiduary devisees, the balance of the net tax attributable to nonresiduary devisees shall be apportioned among the recipients of the nonresiduary devisees in the proportion that the value of each nonresiduary devise included in the measure of the tax bears to the total of all nonresiduary devisees included in the measure of the tax.

2. The net tax attributable to residuary devisees shall be apportioned among the recipients of the residuary devisees included in the measure of the tax in the proportion that the value of each residuary devise included in the measure of the tax bears to the total of all residuary devisees included in the measure of the tax. If the residuary estate is insufficient to pay the net tax

attributable to all residuary devisees, the balance of the net tax attributable to residuary devisees shall be apportioned among the recipients of the nonresiduary devisees in the proportion that the value of each nonresiduary devise included in the measure of the tax bears to the total of all nonresiduary devisees included in the measure of the tax.

(d) Trusts.—The net tax attributable to property passing under the terms of any trust other than a trust created in the decedent's will shall be apportioned in the following order of priority:

1. The net tax attributable to nonresiduary interests of the trust shall be charged to and paid from the residuary portion of the trust, whether or not all interests in the residuary portion are included in the measure of the tax. If the residuary portion is insufficient to pay the net tax attributable to all nonresiduary interests, the balance of the net tax attributable to nonresiduary interests shall be apportioned among the recipients of the nonresiduary interests in the proportion that the value of each nonresiduary interest included in the measure of the tax bears to the total of all nonresiduary interests included in the measure of the tax.

2. The net tax attributable to residuary interests of the trust shall be apportioned among the recipients of the residuary interests of the trust included in the measure of the tax in the proportion that the value of each residuary interest included in the measure of the tax bears to the total of all residuary interests of the trust included in the measure of the tax. If the residuary portion is insufficient to pay the net tax attributable to all residuary interests, the balance of the net tax attributable to residuary interests shall be apportioned among the recipients of the nonresiduary interests in the proportion that the value of each nonresiduary interest included in the measure of the tax bears to the total of all nonresiduary interests included in the measure of the tax.

Except as provided in paragraph (g), this paragraph applies separately for each trust.

(e) Protected homestead, exempt property, and family allowance.—

1. The net tax attributable to an interest in protected homestead, exempt property, and the family allowance determined under s. 732.403 shall be apportioned against the recipients of other interests in the estate or passing under any revocable trust in the following order of priority:

a. Class I.—Recipients of interests passing by intestacy that are included in the measure of the federal estate tax.

b. Class II.—Recipients of residuary devisees, residuary interests, and pretermitted shares under ss. 732.301 and 732.302 that are included in the measure of the federal estate tax.

c. Class III.—Recipients of nonresiduary devisees and nonresiduary interests that are included in the measure of the federal estate tax.

2. Any net tax apportioned to a class pursuant to this paragraph shall be apportioned among each recipient in the class in the proportion that the value of the interest of each bears to the total value of all interests included in that class. A tax may not be apportioned under this paragraph to the portion of any interest applied in satisfaction of the elective share whether or not included in the measure of the tax. For purposes of this paragraph, if the value of the interests described in s. 732.2075(1) exceeds the amount of the elective share, the elective share shall be treated as satisfied first from interests other than those described in classes I, II, and III, and to the extent that those interests are insufficient to satisfy the elective share, from the interests passing to or for the benefit of the surviving spouse described in classes I, II, and III, beginning with those described in class I, until the elective share is satisfied. This paragraph has priority over paragraphs (a) and (h).

3. The balance of the net tax attributable to any interest in protected homestead, exempt property, and the family allowance determined under s. 732.403 which is not apportioned under the preceding provisions of this paragraph shall be apportioned to the recipients of those interests included in the measure of the tax in the proportion that the value of each bears to the total value of those interests included in the measure of the tax.

(f) Construction.—For purposes of this subsection:

1. If the decedent's estate is the beneficiary of a life insurance policy, annuity, or contractual right included in the decedent's gross estate, or is the taker as a result of the exercise or default in exercise of a general power of appointment held by the decedent, that interest shall be regarded as passing under the terms of the decedent's will for the purposes of paragraph (c) or by intestacy if not disposed of by will. Additionally, any interest included in the measure of the tax by reason of s. 2041 of the Internal Revenue Code passing to the decedent's creditors or the creditors of the decedent's estate shall be regarded as passing to the decedent's estate for the purpose of this subparagraph.

2. If a trust is the beneficiary of a life insurance policy, annuity, or contractual right included in the decedent's gross estate, or is the taker as a result of the exercise or default in exercise of a general power of appointment held by the decedent, that interest shall be regarded as passing under the trust for purposes of paragraph (d).

(g) Common instrument construction.—In the application of this subsection, paragraphs (b)-(f) shall be applied to apportion the net tax to the recipients under certain governing instruments as if all recipients under those instruments, other than the estate or revocable trust itself, were taking under a common instrument. This construction applies to the following:

1. The decedent's will and revocable trust if the estate is a beneficiary of the revocable trust or if the revocable trust is a beneficiary of the estate.

2. A revocable trust of the decedent and another revocable trust of the decedent if either trust is the beneficiary of the other trust.

(h) Other interests.—The net tax that is not apportioned to interests under paragraphs (b)-(g), including, but not limited to, the net tax attributable to interests passing by intestacy, interests applied in satisfaction of the elective share pursuant to s. 732.2075(2), interests passing by reason of the exercise or nonexercise of a general power of appointment, jointly held interests passing by survivorship, life insurance, properties in which the decedent held a reversionary or revocable interest, annuities, and contractual rights, shall be apportioned among the recipients of the remaining interests included in the measure of the tax in the proportion that the value of each such interest bears to the total value of all remaining interests included in the measure of the tax.

(i) Assessment of liability by court.—If the court finds that:

1. It is inequitable to apportion interest or penalties, or both, in the manner provided in paragraphs (a)-(h), the court may assess liability for the payment thereof in the manner that the court finds equitable.

2. The payment of any tax was not effectively directed in the governing instrument pursuant to subsection (4) and that such tax is not apportioned by this subsection, the court may assess liability for the payment of such tax in the manner that the court finds equitable.

(4) DIRECTION AGAINST APPORTIONMENT.—

(a) Except as provided in this subsection, a governing instrument may not direct that taxes be paid from property other than that passing under the governing instrument.

(b) For a direction in a governing instrument to be effective to direct payment of taxes attributable to property passing under the governing instrument in a manner different from that provided in this section, the direction must be express.

(c) For a direction in a governing instrument to be effective to direct payment of taxes attributable to property not passing under the governing instrument from property passing under the governing instrument, the governing instrument must expressly direct that the property passing under the governing instrument bear the burden of taxation for property not passing under the governing instrument. Except as provided in paragraph (d), a direction in the governing instrument to the effect that all taxes are to be paid from property passing under the governing instrument whether attributable to property passing under the governing instrument or otherwise shall be effective to direct payment from property passing under the governing instrument of taxes attributable to property not passing under the governing instrument.

(d) In addition to satisfying the other provisions of this subsection:

1.a. For a direction in the decedent's will or revocable trust to be effective in waiving the right of recovery provided in s. 2207A of the Internal Revenue Code for the tax attributable to section 2044 interests, and for any tax imposed by Florida based upon such section 2044 interests, the direction must expressly waive that right of recovery. An express direction that property passing under the will or revocable trust bear the tax imposed by s. 2044 of the Internal Revenue Code is deemed an express waiver of the right of recovery provided in s. 2207A of the Internal Revenue Code. A reference to "qualified terminable interest property," "QTIP," or property in which the decedent had a "qualifying income interest for life" is deemed to be a reference to property upon which tax is imposed by s. 2044 of the Internal Revenue Code which is subject to the right of recovery provided in s. 2207A of the Internal Revenue Code.

b. If property is included in the gross estate pursuant to ss. 2041 and 2044 of the Internal Revenue Code, the property is deemed included under s. 2044, and not s. 2041, for purposes of allocation and apportionment of the tax.

2. For a direction in the decedent's will or revocable trust to be effective in waiving the right of recovery provided in s. 2207B of the Internal Revenue Code for tax imposed by reason of s. 2036 of the Internal Revenue Code, and any tax imposed by Florida based upon s. 2036 of the Internal Revenue Code, the direction must expressly waive that right of recovery. An express direction that property passing under the will or revocable trust bear the tax imposed by s. 2036 of the Internal Revenue Code is deemed an express waiver of the right of recovery provided in s. 2207B of the Internal Revenue Code. If property is included in the gross estate pursuant to ss. 2036 and 2038 of the Internal Revenue Code, the property is deemed included under s. 2038, not s. 2036, for purposes of allocation and apportionment of the tax, and there is no right of recovery under s. 2207B of the Internal Revenue Code.

3. A general statement in the decedent's will or revocable trust waiving all rights of reimbursement or recovery under the Internal Revenue Code is not an express waiver of the rights of recovery provided in s. 2207A or s. 2207B of the Internal Revenue Code.

4. For a direction in a governing instrument to be effective to direct payment of generation-skipping transfer tax in a manner other than as provided in s. 2603 of the Internal Revenue Code, and any tax imposed by Florida based on s. 2601 of the Internal Revenue Code, the direction must specifically reference the tax imposed by s. 2601 of the Internal Revenue Code. A reference to the generation-skipping transfer tax or s. 2603 of the Internal Revenue Code is deemed to be a reference to property upon which tax is imposed by reason of s. 2601 of the Internal Revenue Code.

(e) If the decedent expressly directs by will, the net tax attributable to property over which the decedent held a general power of appointment may be determined in a manner other than as provided in subsection (2) if the net tax attributable to that property does not exceed the difference between the total net tax determined pursuant to subsection (2), determined without

regard to this paragraph, and the total net tax that would have been payable if the value of the property subject to such power of appointment had not been included in the decedent's gross estate. If tax is attributable to one or more section 2044 interests pursuant to subsection (2), the net tax attributable to the section 2044 interests shall be calculated before the application of this paragraph unless the decedent expressly directs otherwise by will.

(f) If the decedent's will expressly provides that the tax is to be apportioned as provided in the decedent's revocable trust by specific reference to the revocable trust, an express direction in the revocable trust is deemed to be a direction contained in the will as well as the revocable trust.

(g) An express direction in the decedent's will to pay tax from the decedent's revocable trust by specific reference to the revocable trust is effective unless a contrary express direction is contained in the revocable trust.

(h) If governing instruments contain effective directions that conflict as to payment of taxes, the most recently executed tax apportionment provision controls to the extent of the conflict. For the purpose of this subsection, if a will or other governing instrument is amended, the date of the codicil to the will or amendment to the governing instrument is regarded as the date of the will or other governing instrument only if the codicil or amendment contains an express tax apportionment provision or an express modification of the tax apportionment provision. A general statement ratifying or republishing all provisions not otherwise amended does not meet this condition. If the decedent's will and another governing instrument were executed on the same date, the will is deemed executed after the other governing instrument. The earlier conflicting governing instrument controls as to any tax remaining unpaid after the application of the later conflicting governing instrument.

(i) A grant of permission or authority in a governing instrument to request payment of tax from property passing under another governing instrument is not a direction apportioning the tax to the property passing under the other governing instrument. A grant of permission or authority in a governing instrument to pay tax attributable to property not passing under the governing instrument is not a direction apportioning the tax to property passing under the governing instrument.

(j) This section applies to any tax remaining to be paid after the application of any effective express directions. An effective express direction for payment of tax on specific property or a type of property in a manner different from that provided in this section is not effective as an express direction for payment of tax on other property or other types of property included in the measure of the tax.

(5) TRANSFER OF PROPERTY.—A personal representative or fiduciary shall not be required to transfer to a recipient any property reasonably anticipated to be necessary for the payment of taxes. Further, the personal

representative or fiduciary is not required to transfer any property to the recipient until the amount of the tax due from the recipient is paid by the recipient. If property is transferred before final apportionment of the tax, the recipient shall provide a bond or other security for his or her apportioned liability in the amount and form prescribed by the personal representative or fiduciary.

(6) ORDER OF APPORTIONMENT.—

(a) The personal representative may petition at any time for an order of apportionment. If administration of the decedent's estate has not commenced at any time after 90 days from the decedent's death, any fiduciary may petition for an order of apportionment in the court in which venue would be proper for administration of the decedent's estate. Notice of the petition for order of apportionment must be served on all interested persons in the manner provided for service of formal notice. At any time after 6 months from the decedent's death, any recipient may petition the court for an order of apportionment.

(b) The court shall determine all issues concerning apportionment. If the tax to be apportioned has not been finally determined, the court shall determine the probable tax due or to become due from all interested persons, apportion the probable tax, and retain jurisdiction over the parties and issues to modify the order of apportionment as appropriate until after the tax is finally determined.

(7) DEFICIENCY.—

(a) If the personal representative or fiduciary does not have possession of sufficient property otherwise distributable to the recipient to pay the tax apportioned to the recipient, whether under this section, the Internal Revenue Code, or the governing instrument, if applicable, the personal representative or fiduciary shall recover the deficiency in tax so apportioned to the recipient:

1. From the fiduciary in possession of the property to which the tax is apportioned, if any; and

2. To the extent of any deficiency in collection from the fiduciary, or to the extent collection from the fiduciary is excused pursuant to subsection (8) and in all other cases, from the recipient of the property to which the tax is apportioned, unless relieved of this duty as provided in subsection (8).

(b) In any action to recover the tax apportioned, the order of apportionment is prima facie correct.

(c) In any action for the enforcement of an order of apportionment, the court shall award taxable costs as in chancery actions, including reasonable attorney fees, and may award penalties and interest on the unpaid tax in accordance with equitable principles.

(d) This subsection does not authorize the recovery of any tax from a company issuing life insurance included in the gross estate, or from a bank, trust company, savings and loan association, or similar institution with respect to any account in the name of the decedent and any other person which passed by operation of law at the decedent's death.

(8) RELIEF FROM DUTY.—

(a) A personal representative or fiduciary who has the duty under this section of collecting the apportioned tax from recipients may be relieved of the duty to collect the tax by an order of the court finding that:

1. The estimated court costs and attorney fees in collecting the apportioned tax from a person against whom the tax has been apportioned will approximate or exceed the amount of the recovery;

2. The person against whom the tax has been apportioned is a resident of a foreign country other than Canada and refuses to pay the apportioned tax on demand; or

3. It is impracticable to enforce contribution of the apportioned tax against a person against whom the tax has been apportioned in view of the improbability of obtaining a judgment or the improbability of collection under any judgment that might be obtained, or otherwise.

(b) A personal representative or fiduciary is not liable for failure to attempt to enforce collection if the personal representative or fiduciary reasonably believes that collection would have been economically impracticable.

(9) UNCOLLECTED TAX.—Any apportioned tax that is not collected shall be reapportioned in accordance with this section as if the portion of the property to which the uncollected tax had been apportioned had been exempt.

(10) CONTRIBUTION.—This section does not limit the right of any person who has paid more than the amount of the tax apportionable to that person, calculated as if all apportioned amounts would be collected, to obtain contribution from those who have not paid the full amount of the tax apportionable to them, calculated as if all apportioned amounts would be collected, and that right is hereby conferred. In any action to enforce contribution, the court shall award taxable costs as in chancery actions, including reasonable attorney fees.

(11) FOREIGN TAX.—This section does not require the personal representative or fiduciary to pay any tax levied or assessed by a foreign country unless specific directions to that effect are contained in the will or other instrument under which the personal representative or fiduciary is acting.

Section 7. Section 736.1005, Florida Statutes, is amended to read:

736.1005 Attorney attorney's fees for services to the trust.—

(1) Any attorney who has rendered services to a trust may be awarded reasonable compensation from the trust. The attorney may apply to the court for an order awarding attorney attorney's fees and, after notice and service on the trustee and all beneficiaries entitled to an accounting under s. 736.0813, the court shall enter an order on the fee application.

(2) If attorney ~~Whenever attorney's~~ fees are to be paid from ~~out of~~ the trust under subsection (1), s. 736.1007(5)(a), or s. 733.106(4)(a), the court, in its discretion, may direct from what part of the trust the fees shall be paid.

(a) All or any part of the attorney fees to be paid from the trust may be assessed against one or more persons' part of the trust in such proportions as the court finds to be just and proper.

(b) In the exercise of its discretion, the court may consider the following factors:

1. The relative impact of an assessment on the estimated value of each person's part of the trust.

2. The amount of attorney fees to be assessed against a person's part of the trust.

3. The extent to which a person whose part of the trust is to be assessed, individually or through counsel, actively participated in the proceeding.

4. The potential benefit or detriment to a person's part of the trust expected from the outcome of the proceeding.

5. The relative strength or weakness of the merits of the claims, defenses, or objections, if any, asserted by a person whose part of the trust is to be assessed.

6. Whether a person whose part of the trust is to be assessed was a prevailing party with respect to one or more claims, defenses, or objections.

7. Whether a person whose part of the trust is to be assessed unjustly caused an increase in the amount of attorney fees incurred by the trustee or another person in connection with the proceeding.

8. Any other relevant fact, circumstance, or equity.

(c) The court may assess a person's part of the trust without finding that the person engaged in bad faith, wrongdoing, or frivolousness.

(3) Except when a trustee's interest may be adverse in a particular matter, the attorney shall give reasonable notice in writing to the trustee of the attorney's retention by an interested person and the attorney's entitlement to fees pursuant to this section. A court may reduce any fee award for services rendered by the attorney prior to the date of actual notice to the

trustee, if the actual notice date is later than a date of reasonable notice. In exercising this discretion, the court may exclude compensation for services rendered after the reasonable notice date but before ~~prior to~~ the date of actual notice.

Section 8. Section 736.1006, Florida Statutes, is amended to read:

736.1006 Costs in trust proceedings.—

(1) In all trust proceedings, costs may be awarded as in chancery actions.

(2) ~~If Whenever~~ costs are to be paid from out of the trust under subsection (1) or s. 733.106(4)(a), the court, in its discretion, may direct from what part of the trust the costs shall be paid. All or any part of the costs to be paid from the trust may be assessed against one or more persons' part of the trust in such proportions as the court finds to be just and proper. In the exercise of its discretion, the court may consider the factors set forth in s. 736.1005(2).

Section 9. The amendments made by this act to ss. 733.212, 733.2123, 733.3101, and 733.504, Florida Statutes, apply to proceedings commenced on or after July 1, 2015. The law in effect before July 1, 2015, applies to proceedings commenced before that date.

Section 10. (1) The amendment made by this act to s. 733.817(1)(g) and (2)(c), Florida Statutes, is remedial in nature, is intended to clarify existing law, and applies retroactively to all proceedings pending or commenced on or after July 1, 2015, in which the apportionment of taxes has not been finally determined or agreed for the estates of decedents who die after December 31, 2004.

(2) The amendment made by this act to s. 733.817(1)(e)3., (3)(e), (3)(g), (4)(b), (4)(c), (4)(d)1.b., (4)(e), (4)(h), and (6), Florida Statutes, applies to the estates of decedents who die on or after July 1, 2015.

(3) Except as provided in subsections (1) and (2), the amendment made by this act to s. 733.817, Florida Statutes, is remedial in nature, is intended to clarify existing law, and applies retroactively to all proceedings pending or commenced on or after July 1, 2015, in which the apportionment of taxes has not been finally determined or agreed and without regard to the date of the decedent's death.

Section 11. The amendments made by this act to ss. 733.106, 736.1005, and 736.1006, Florida Statutes, apply to proceedings commenced on or after July 1, 2015. The law in effect before July 1, 2015, applies to proceedings commenced before that date.

Section 12. This act shall take effect July 1, 2015.

Approved by the Governor May 14, 2015.

Filed in Office Secretary of State May 14, 2015.