

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6249

BILL NUMBER: HB 1508

NOTE PREPARED: Apr 26, 2007

BILL AMENDED: Mar 15, 2007

SUBJECT: Probate and Trust Matters.

FIRST AUTHOR: Rep. Koch

FIRST SPONSOR: Sen. Zakas

BILL STATUS: Enrolled

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Trusts:* The bill provides that a trust is entitled to certain property tax deductions for real property owned by the trust if the property is occupied by an individual who has a beneficial interest in the trust, would be considered the owner of the property if the property were a life estate, and otherwise qualifies for the deduction. The bill specifies that the trust entitled to a deduction is not required to file a statement to apply for the deduction if certain conditions are met. The bill eliminates the requirement that a trust certification document include the trust's taxpayer identification number. The bill also provides that the trustee of a trust to which an interest in real property is transferred is considered the insured owner under a title insurance policy issued for the interest in real property if the transfer meets certain conditions.

Notification Requirements: The bill provides that when a court has not directed notice by rule, the default certified or registered mail option is replaced by the option to provide notice by first class postage prepaid mail. It specifies that the notice provided by the clerk of the court to an heir, a devisee, a legatee, or a creditor when letters testamentary or of administration are issued shall be served by certified mail. The bill provides that the notice requirements applying to hearings on filed estate accountings also apply to a hearing on a petition for a court to decree the final distribution of an estate. It requires notice to be given by certified mail when a petition for the appointment of a guardian or for the issuance of a protective order is filed under the probate code. The bill specifies that when a petition for appointment of a guardian or for the issuance of a protective order is filed with the court, notice of the petition and the hearing on the petition shall be given by certified mail. The bill removes a provision requiring that notices concerning guardianship petitions be given according to the notice requirements applicable to hearings on guardianship petitions.

Wills: The bill provides that a will can be admitted to probate more than three years after the decedent's death

if the will is presented for probate less than 60 days after: (1) another will previously offered for probate is denied probate; or (2) the probate of another will previously admitted to probate is revoked.

Small Estates: The bill authorizes the use of an affidavit to obtain the information necessary to determine whether the value of a decedent's gross probate estate is low enough to allow the estate to be administered summarily. The bill also provides immunity from civil liability to a person who provides information in good faith reliance upon the affidavit. The bill increases the maximum gross value of a probate estate that may be summarily distributed and closed upon the filing of an affidavit from \$25,000 to \$50,000.

Personal Representative: The bill specifies that the personal representative has the right to take possession of all the property of the decedent, without exception. It also removes a provision under which the personal representative is not authorized to possess property subject to the surviving spouse and family allowances.

Guardianships: The bill provides that upon the termination of a guardianship any remaining property subject to the guardianship may be transferred to a trust approved by the court or to a custodian under the Uniform Transfers to Minors Act.

Uniform Transfers to Minors Act: The bill authorizes the self-appointment of certain fiduciaries as custodians under the Uniform Transfers to Minors Act.

The bill also makes technical corrections. (The introduced version of this bill was prepared by the Probate Code Study Commission.)

Effective Date: July 1, 2007.

Explanation of State Expenditures:

Explanation of State Revenues: (Revised) *Trusts:* The state levies a small tax rate for the State Fair and State Forestry that applies to all assessed value (AV). If property is not a part of the tax base, the state cannot assess this tax on the property. Any decrease in the AV base resulting from additional aged, blind/disabled, and veterans deductions granted due to this bill would decrease the property tax revenue for these two funds. However, the potential revenue loss due to the bill is indeterminable.

Small Estates: The increase in the small estates threshold could result in an indeterminable reduction in court cost fees paid for filing probate cases. Current statute imposes a \$120 fee for court costs relating to filing of a probate case. Under current statute, 70% of the fees are distributed to the state General Fund, 27% is distributed to the county general fund, and 3% is distributed to cities and towns maintaining law enforcement agencies that prosecute at least 50% of its ordinance violations in a circuit, superior, county, or municipal court.

Explanation of Local Expenditures: *Notification Requirements:* The bill changes the general requirement for notice by mail that is provided when the probate court does not direct by rule the manner in which notice is to be given. The bill changes the manner of notice from registered or certified mail to first class postage prepaid mail. This could potentially reduce the cost of notice provided by mail when the probate court does not provide notice requirements.

The bill also narrows the manner of notice in several instances to certified mail notification. This notice change involves when notice is provided:

(1) to an heir, devisee, legatee, or creditor when letters testamentary or of administration are issued.

(2) when a petition for the appointment of a guardian or for the issuance of a protective order is filed under the probate code.

(3) when a petition for appointment of a guardian or for the issuance of a protective order is filed with the probate court.

The bill defines the notification that must be provided prior to a petition for the court to decree the final distribution of an estate. Current statute requires notice of the hearing to be given to all interested parties. The bill requires the notice to be given at least 14 days prior to the hearing by ordinary mail to all persons entitled to a share in the final distribution of the residue of the estate. The potential impact of this change is unknown. It would depend on how such notice is currently given by courts (i.e., registered mail, certified mail, or ordinary mail) and whether notification is currently being given to persons other than those entitled to a share of the estate.

The potential impact of these changes is unknown and would depend on how such notice is currently being given by probate courts.

Explanation of Local Revenues: (Revised) *Trusts:* The bill could potentially lead to additional aged, blind/disabled, and veterans deductions being granted. However, the total amount of these additional deductions is indeterminable. The additional deductions would serve to shift part of the property tax burden from the taxpayers receiving the deduction to all taxpayers in the form of an increased tax rate.

Background Information: The bill provides that a trust is entitled to the aged, blind/disabled, and veterans property tax deductions for real property it owns, provided the property is occupied by an individual and the county auditor determines that the individual: (1) has a beneficial interest in the trust; (2) otherwise qualifies for the deductions; and (3) would be considered the owner of the property under the property tax law.

Small Estates: See *Explanation of State Revenues.*

State Agencies Affected: Department of Local Government Finance.

Local Agencies Affected: Probate courts.; Counties, cities, and towns; County Auditors.

Information Sources:

Fiscal Analyst: Jim Landers, 317-232-9869.