

## STATEMENT OF PURPOSE

### RS20400

Idaho Code 15-1-501, enacted in 2010, provides that a provision in a will or trust of a decedent who dies in 2010 that refers to estate of generation-skipping transfer tax rules will be construed, in most cases, as if the decedent had died on December 31, 2009. Congress, in the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, on December 17, 2010, retroactively reinstated the estate and generation-skipping transfer taxes, effective January 1, 2010. The new law, does, however, give personal representatives of estates of individuals dying in 2010 an election not to have the estate subject to the estate tax. It is not clear, under Idaho Code 15-1-501, how one should interpret estate tax-related terms when a personal representative elects not to have the estate tax apply.

In addition, Congress, in the same act, raised the estate and GST tax exemptions from \$3.5 million, in 2009, to \$5 million, in 2010. This has caused these exemptions to increase by 150% between 2008 (\$2 million) and 2010 (\$5 million). This rapid and retroactive increase has dramatically altered the distribution of estates that relied upon formula clauses, in ways that the persons whose estates are so administered could not possibly have anticipated. In many cases, this change in the size of a particular share will entirely disinherit beneficiaries whom the decedent intended to share significantly in the estate. Estates of decedents who were incapacitated during the last two or three years before their deaths are affected in a particularly unfortunate way, because they could neither reasonably anticipate these changes in the exemption levels nor change their instruments to address them.

Therefore, this bill addresses both of these situations. First, the bill provides that a personal representative's election not to have the estate tax apply to a 2010 decedent's estate does not affect the meaning of the estate tax and GST tax-related formula clauses. Second, the fiduciaries of an estate and its beneficiaries will be able to go to court to determine how the decedent would have wanted the tax-related clauses in the governing instrument construed, and they will be able to consider evidence outside of the instruments themselves. This is an extension of the Idaho Trust and Estate Dispute Resolution Act, already available to trusts and estates under the Idaho Probate Code in Chapter 8 of Title 15.

The bill also enables the fiduciaries of an estate and its beneficiaries to be able to enter into nonjudicial agreements reforming a will or trust in a manner they all agree is consistent with the decedent's wishes with respect to the tax-related clauses in the governing instrument. This, too, is an extension of the TEDRA provisions in the Idaho Probate Code. The existing section was already in effect for estates of decedents dying on or after January 1, 2010, and this is reaffirmed in the bill.

### FISCAL NOTE

This bill will have no negative fiscal effect.

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