STATEMENT OF PURPOSE

RS20407

Idaho Code §15-2-801 covers "renunciations". Renunciations allow a person to renounce, or refuse to accept, a bequest of some sort coming to the person, usually from and estate or trust. They are a useful tool in estate planning. Until very recently, qualified renunciations done for tax purposes were required by both IRS and Idaho law to be done within 9 months after the transfer or death to be valid. There are also other requirements which are not relevant to this bill. The requirement also had the effect of creating a relatively limited time within which decisions on renunciations were to be made, so that the administration of estates or trusts was not unduly delayed. 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 also gave personal representatives of estates of individuals dying in 2010 an election not to have the estate subject to the estate tax, to opt out of the retroactive provisions. These new provisions created an unexpected and complicated set of new considerations for whether a renunciation would be appropriate in an estate setting, where the renunciation is called a "disclaimer."

Because the new law was passed very late in the year, and would take time to be promulgated and analyzed, most situations where a renunciation now was appropriate because of the retroactive law would not be able to use the renunciation because more than 9 months had passed since the death. Therefore, the new law also extended the time for renunciations for IRS law to September 19, 2011, essentially 9 months after the enactment of the new law (dates are almost always extended to the next business day if the date would otherwise fall on a non-business day, and September 17, 2011 is a Saturday). However, renunciations must also be valid under local law. Idaho law, as set forth in Idaho Code §15-2-801, still limits the renunciation to 9 months after the death. This would remove the ability to use the extended time period in the new tax law for renunciations.

Therefore, this bill cures that problem. First, the bill adds to the beginning of paragraph 2, which sets the 9 month time limit, the words "Except as provided in subsection (9) of this section." Second, the bill adds a new subsection (9) to the statute that states, "(9) The due date for filing a timely disclaimer under subsection (2) of this section, where the decedent died after December 31, 2009, but before December 17, 2010, shall be not earlier than September 19, 2011." These two changes solve the conflict between the new tax law and the existing Idaho law.

Finally, since the provisions in the changes will only apply to decedents whose death occurred in 2010, Section 2 of the bill provides that the act will apply to all decedents dying on or after January 1, 2010.

FISCAL NOTE

This bill will have no negative fiscal effect.

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