F I S C A L   I M P A C T   R E P O R T

SPONSOR Wirth **DATE TYPED** 02/11/05 **HB** 829

SHORT TITLE Uniform Estate Tax Apportionment Act **SB**

ANALYST Ford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 829 enacts a new section of the Uniform Probate Code and enacts the Uniform Estate Tax Apportionment Act. The bill provides procedures for governing apportionment of estate tax among beneficiaries and governs the liability of nonprobate transferees for creditor claims and statutory allowances.

Significant Issues

The National Conference of Commissioners on Uniform State Laws (NCCUSL) drafted the Uniform Estate Tax Apportionment Act for proposed adoption on all the states. The NCCUSL is an organization of qualified individuals appointed by state governments to research, draft and promote enactment of uniform state laws in areas where uniformity is desirable and practical.

The AOC provides a helpful explanation of the bill:

Uniform Probate Code (UPC)

Section 45-6-102: House Bill 829 enacts an amendment to Section 6 of the UPC that is a draft from the NCCUSL 1998 annual meeting. The specific amendment governs the liability of nonprobate transferees for creditor claims and statutory allowances. In the words of the commissioners:

> This section extends protections for family exemption beneficiaries and creditors of decedents to new categories of non-probate transferees of decedents. However, unlike conventional and cumbersome probate protections, the remedy contemplated by this section is to enforce a duty placed on nonprobate transferees to contribute as necessary to satisfy family exemptions and duly allowed creditors' claims remaining unpaid because of inadequate probate estate values. The maximum liability for a single nonprobate transferee is the value of the transfer. Values are determined under subsection (b) as of the time when the benefits are "received or controlled by the transferee." This would be the date of the decedent's death for nonprobate transfers via a revocable trust, and date of receipt for other nonprobate transfers. Two or more transferees are severally liable for proportions of the liability based on the value of transfers received by each.

Uniform Estate Tax Apportionment Act (UETAA)

The Act provides procedures governing the apportionment of estate tax among beneficiaries. In summarizing the UETAA, the commissioners noted that:

> If a state does not have a statutory apportionment law, the burden of the estate taxes generally will fall on residuary beneficiaries of the probate estate. This means that recipients of many types of nonprobate assets (such as beneficiaries of revocable trusts and surviving joint tenants) may be exonerated from paying a portion of the tax. Also, it generates a risk that residual gifts to the spouse or a charity may result in a smaller deduction and a larger tax. A number of states have adopted legislation apportioning the burden of estates taxes among the beneficiaries.

The current Act was approved and recommended for enactment in all states at the annual meeting of the National Conference of Commissioners on Uniform State Laws in August 2003. Sections of the Act cover the following:

- Apportionment by will or other dispositive instrument
- Statutory apportionment of estate taxes
- Credits and deferrals
- Insulated property and the advancement of tax
- Apportionment and recapture of special elective benefits
- Securing payment of estate tax from property in possession of fiduciary
- Collection of estate tax by fiduciary
- Right of reimbursement
- Action to determine or enforce act
- Uniformity of application and construction
- Severability
- Applicability

> Under House Bill 829, the UETAA does not apply to the estate of a decedent who dies on or within three years after the effective date of the Act, nor to the estate of a decedent who dies more than three years after the effective date of the Act if the decedent continuously lacked testamentary capacity from the expiration of the three-year period until the date of death. The effective date of the Act is July 1, 2005.

TRD writes: "[The UETAA] does not apply to inheritance tax (a tax on the beneficiaries, rather than on the estate). It replaces current law with far more intricate, detailed rules on apportionment, leaving much less latitude to a probate judge's "sense of fair play." Although the proposed Act changes the apportionment of tax liability within an estate, it does not have a major impact on total state tax liabilities."

FISCAL IMPLICATIONS

The AOC indicates that the courts will be fiscally impacted as a result of new proceedings available under the UPC and UETAA.

TRD indicates that the bill will have not significant impact on the estate taxes collected by the state.

EF/lg