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## **OLR Bill Analysis**

### **sSB 1056**

#### ***AN ACT CONCERNING THE EXTENSION OF TIME FOR MAKING A QUALIFIED DISCLAIMER FOR FEDERAL ESTATE TAX PURPOSES.***

#### **SUMMARY:**

This bill gives people more time to refuse to accept (“make a disclaimer of”) property given or transferred by someone who died after December 31, 2009 but before December 17, 2010.

It allows such disclaimers to be made within the current time limits set by law or by September 17, 2011, whichever is later. It applies to both testamentary (created by will or the laws of intestacy, i.e., those governing distribution when there is no will) and nontestamentary transfers (such as those under trusts not created by a will; annuities; life, health, or accident insurance; bank accounts; or other contracts or documents naming someone as beneficiary).

EFFECTIVE DATE: Upon passage

#### **BACKGROUND**

##### ***Disclaimers***

By law, a disclaimer of a testamentary interest is effective if it is delivered within a certain time period to the legal representative of the estate of the decedent or deceased donee (recipient) of a power of appointment or the holder of the legal title to the property to which the interest relates. Additional recording requirements apply for disclaimers of real property. Similar requirements apply to disclaim nontestamentary interests.

If a gift is disclaimed, the disclaimer relates back for all purposes to the time when the gift was made. Generally, the disclaimed property passes as if the disclaiming person had predeceased the testator (person making the will) or died immediately before the effective date

of the nontestamentary instrument, unless the will or nontestamentary instrument provided for another disposition of the property in the event of a disclaimer.

By law, disclaimers of present testamentary interests must be made within nine months of the later of (1) the date the decedent or the donee of the testamentary power of appointment dies or (2) if the disclaimer is made by or on a natural person's behalf, the date that person reaches age 18, or that person's death if he or she does not reach age 18. Similar rules apply to present nontestamentary interests, except the date under (1) above is the date on which the maker no longer has power to revoke the nontestamentary instrument or transfer to the maker or someone else the entire legal and equitable ownership of the interest.

Similar rules apply for future interests. (These are property interests that come into effect upon the happening of a specific event, such as the death of a certain person.) To be valid, disclaimers of such interests (whether testamentary or nontestamentary) must be made within nine months of the later of (1) the event that determines that the taker of the interest is finally determined and the interest is indefeasibly vested (i.e., a contingency that could defeat the interest could no longer occur) or (2) if the disclaimer is made by or on a natural person's behalf, the date that person reaches age 18, or that person's death if he or she does not reach age 18.

Different rules apply for nontestamentary interests when the person making the disclaimer, or the person on whose behalf the disclaimer was made, does not have actual knowledge that the interest exists. In that case, the disclaimer must be made within nine months of the later of (1) the date when the person making the disclaimer, or the person on whose behalf the disclaimer was made, first has such actual knowledge or (2) the same rules set out above for disclaimers made by or on a natural person's behalf (CGS §§ 45a-579, -583).

***Related Federal Law***

On December 17, 2010, President Obama signed into law the Tax

Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Pub. L. 111-312, 124 Stat. 3296). Among numerous other provisions, the act extends the due date for filing a federal estate tax return and paying federal estate tax to nine months after the act's passage for estates of decedents dying after December 31, 2009, and before December 17, 2010.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 45 Nay 0 (04/15/2011)