

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1939



ENROLLED

Committee Sub. for

HOUSE BILL No. 272

*(Originating in the Committee on
Taxation and Finance)*

(By Mr.)



PASSED *March 10,* 1939

In Effect *from* Passage

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COMMITTEE SUBSTITUTE FOR

House Bill No. 272

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[Passed March 10, 1939; in effect from passage.]

AN ACT to amend article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting section one and by adding a new section, designated as section fourteen-b to said article eleven, relating to inheritance and transfer taxes.

Be it enacted by the Legislature of West Virginia:

That article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by amending and reenacting section one and by adding a new section, designated as section fourteen-b, all to read as follows:

Article 11. Inheritance and Transfer Taxes.

Section 1. *When Imposed.* A tax, payable into the treasury of the State, shall be imposed upon the transfer, in trust,

3 or otherwise, of any property, or interest therein, real, per-
4 sonal, or mixed, if such transfer be; (a) By will or by laws
5 of this state regulating descent and distribution from any
6 person who is a resident of the State at the time of his death
7 and who shall die seized or possessed of property; (b) By
8 will or by laws regulating descent and distribution of prop-
9 erty within the State, or within its taxing jurisdiction, and
10 the decedent was a nonresident of the State at the time of
11 his death; (c) By a resident, or by a nonresident owning
12 taxable property within the state or within its jurisdiction,
13 by deed, grant, sale, or gift, made in contemplation of the
14 death of the grantor, vendor, or donor, or intended to take
15 effect in possession or enjoyment at or after such death, or
16 where any change in the use or enjoyment of property in-
17 cluded in such transfer, or the income thereof, may occur in
18 the lifetime of the grantor, vendor, or donor, by reason of
19 any power reserved to, or conferred upon, the grantor,
20 vendor, or donor, either solely or in conjunction with any
21 person, or persons, to alter, or to amend, or to revoke any
22 transfer, or any portion thereof, as to the portion remaining
23 at the time of death of the grantor, vendor, or donor, thus

24 subject to alteration, amendment or revocation. If any one
25 of the transfers mentioned in this subdivision is made for
26 valuable consideration, the portion of the transfer for which
27 the grantor, or vendor receives equivalent monetary value
28 is not taxable, but the remaining portion thereof is taxable.
29 Every transfer by deed, grant, sale or gift, made within
30 three years prior to the death of the grantor, vendor, or
31 donor, without adequate valuable consideration, shall be con-
32 strued to have been made in contemplation of death within
33 the meaning of this subdivision; (d) By any person who
34 shall transfer any property which he owns, or shall cause any
35 property to which he is absolutely entitled to be transferred
36 to or vested in himself and any other person jointly, with
37 the right of survivorship, in whole or in part, in such other
38 person, a transfer shall be deemed to occur and to be taxable
39 under the provisions of this article upon the vesting of such
40 title in the survivor: *Provided, however,* This subsection shall
41 not apply to bank accounts payable to the class designated in
42 section two-a in a total amount of twenty-five hundred dol-
43 lars or less; (e) To any person deriving an estate in property,
44 coupled with a power of appointment, in which event such

45 estate shall be taxed as other limited estates; and whenever
46 any person shall exercise a power of appointment derived
47 from any disposition of property made, which appointment
48 when made shall be deemed a transfer taxable under the
49 provisions of this article, in the same manner as though the
50 property to which such appointment relates belonged abso-
51 lutely to the donee of such power and had been bequeathed
52 or devised by such donee by will; and whenever any person
53 possessing such a power of appointment so derived shall omit
54 or fail to exercise the same within the time provided therefor,
55 in whole or in part, a transfer taxable under the provisions of
56 this article shall be deemed to take place to the extent of such
57 omission or failure, in the same manner as though the person
58 thereby becoming entitled to the possession or enjoyment of
59 the property to which such power related had succeeded
60 thereto by a will of the donee of the power failing to exercise
61 such power, and shall take effect at the time of such omission
62 or failure. *Provided, however,* That in either of which events
63 the tax commissioner, on the application of any person in
64 interest or upon his own motion, may, after due notice to the
65 known persons interested, apportion such taxes, first, as to the

66 interest of the donee of the power of appointment, and second,
67 to the remainder or reversionary interests of others at the
68 highest probable rate applicable thereto, and shall make his
69 certificate accordingly, which shall be forwarded and disposed
70 of in the same manner as other certificates herein provided for.
71 The portion of any such taxes apportioned as to the remainder
72 or reversionary interest shall be paid out of the corpus of
73 the estate in like manner as other assessments as if such
74 interest had vested in possession; and, upon such assess-
75 ment and payment of tax the matter shall become a finality;

76 (f) By the terms of any annuity or investment contracts,
77 or similar type or form of contract or policy, and shall be
78 on the amount payable under any such contract or policy,
79 on account of a death, to named beneficiaries, to his estate
80 or in trust for the benefit of any individual or individuals,
81 including (1) all such policies or contracts hereafter issued,
82 and (2) all such policies or contracts now in force: *Pro-*
83 *vided, however,* That there shall be exempt from the pro-
84 visions of this subsection the proceeds of such contracts or
85 policies: (a) When the premiums on such policies or con-
86 tracts were paid by the beneficiary named in such policy

87 or contract, to the extent only of the ratio of premiums
88 paid by the beneficiary bear to the total premiums paid;
89 (b) when the proceeds of such policies or contracts have
90 been assigned by the decedent for a valuable consideration
91 either in form absolute or as collateral security for the pay-
92 ment of a bona fide indebtedness of the decedent, to the
93 extent that the proceeds thereof shall be necessary to pay
94 and satisfy such indebtedness. It is provided, however, that
95 no annuity settlement or arrangement accepted in lieu of
96 cash settlement of a life insurance policy, whereby the pro-
97 ceeds of such policy are payable in instalments, shall be
98 subject to taxation under the provisions of this article, nor
99 shall the provisions of this article apply to the proceeds of any
100 policy of life or accident insurance payable to a named bene-
101 ficiary or beneficiaries whether directly or in trust or other-
102 wise.

103 Where annuity or investment contracts or policies are left
104 by a decedent in such manner that the proceeds thereof cannot
105 be subjected to the payment of his debts, and where the pro-
106 ceeds of such annuity or investment contracts are received by
107 beneficiaries thereof, the fact that the decedent may have

108 been insolvent and that a portion of his debts may remain
109 unpaid shall not affect the liability for inheritance tax on
110 such proceeds.

Sec. 14-b. *Payments to Beneficiaries; Notice to Tax Com-*
2 *missioner; Penalties.* Every corporation, partnership, asso-
3 ciation, individual, order or society authorized to transact
4 annuity contracts, investment contracts, or similar types or
5 forms of policy or contract business within this state which
6 shall pay to any named beneficiary, estate or trustee upon
7 the death of a resident of this state, the proceeds of any such
8 contract or policy shall, on the date of such payment, give
9 notice thereof, in writing, to the tax commissioner of West
10 Virginia, stating (a) the amount of such payment, (b) the
11 name and address of each beneficiary, and (c) the time and
12 manner of payment; *provided, however,* such notice shall
13 not be required (1) when the policy or contract involved or
14 the payment to be made is fifteen hundred dollars or less and
15 is payable to the class designated in section two-a of this ar-
16 ticle, and (2) when the amount of the policy or payment to
17 be made is one thousand dollars or less.

18 Any such company so authorized to do business in this
19 state, failing or refusing to comply with the provisions of
20 this section, shall thereby become liable to the state for any
21 amount of tax which may be due on the amount of payment
22 concerning which such company failed or refused to file the
23 notice prescribed by this section.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

E. O. Wiseman

Chairman Senate Committee

Pepe G. Walter

Chairman House Committee

Originated in the *House of Delegates*

Takes effect *from* passage.

Charles M. ...

Clerk of the Senate

Wm. S. Hall

Clerk of the House of Delegates

Wm. ...

President of the Senate

James Kay Thomas

Speaker House of Delegates

The within *approved* this the *16th* day of *March*, 1939.

Sam A. ...

Governor.

