# WEST VIRGINIA CODE CHAPTER 11 ARTICLE 11

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## §11-11-1. Short title; arrangement and classification.

This article shall be known as the "West Virginia Estate Tax Act."

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**§11-11-2. Definitions.**

(a) General. -- When used in this article, or in the administration of this article, terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition.

(b) Terms defined.

(1) Alien. -- The term "alien" means a decedent who, at the time of his or her death, was not domiciled in this state or any other state of the United States and was not a citizen of the United States.

(2) Decedent or transferor. -- The terms "decedent" or "transferor" are used herein interchangeably and mean a deceased natural person by or from whom a transfer is made; and include any testator, intestate grantor, bargainor, vendor, assignor, donor, joint tenant or insured.

(3) Delegate. -- The term "delegate" in the phrase "or his or her delegate," when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Department duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the function or functions mentioned or described in the context.

(4) Estate or property. -- The terms "estate" or "property" mean the real or personal property or interest therein of a decedent or transferor and includes all the following:

(A) All intangible personal property of a resident decedent within or without this state or subject to the jurisdiction of this state.

(B) All intangible personal property in this state belonging to a deceased nonresident of the United States, including all stock of a corporation organized under the laws of this state, or which has its principal place of business or does the major part of its business in this state, or of a federal corporation or national bank which has its principal place of business or does the major part of its business in this state, excluding, however, savings accounts and savings and loan associations operating under the authority of the state banking commissioner or the federal home loan bank board, and bank deposits, unless those deposits are held and used in connection with a business conducted or operated, in whole or in part, in this state.

(5) Federal credit. -- The term "federal credit" means the maximum amount of the credit for state death taxes allowable by Section 2011, credit against federal estate tax (or Section 2102 in the case of an alien) and Section 2602, credit against the federal tax on generation-skipping transfers of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States, in respect to a decedent's taxable estate. The term "maximum amount" shall be construed so as to take full

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advantage of such credit as the laws of the United States may allow: Provided, That in no event shall such amount be less than the federal credit allowable by Sections 2011, 2102 and 2602 of the Internal Revenue Code, as it existed on January 1, 1985: Provided, however, That for estates of decedents dying after December 31, 2001, such amount may in no event be less than the federal credit allowable by Sections 2011, 2102, and 2604 of the Internal Revenue Code, as amended by the estate, gift and generation - skipping transfer tax provisions of Public Law 107-16, the Economic Growth and Tax Relief Reconciliation Act of 2001.

(6) Gross estate. -- The term "gross estate" means the gross estate of the decedent as defined in Section 2031 (or Section 2103 in the case of an alien) of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States.

(7) Includes and including. -- The words "includes" and "including" when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(8) Intangible personal property. -- The term "intangible personal property" means incorporeal personal property including deposits in banks, negotiable instruments, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in personal property, evidences of debt and chooses in action generally.

(9) Internal revenue code. -- The term "Internal Revenue Code" means the United States Internal Revenue Code of 1954, as amended and in effect on January 1, 1985, including all changes to such code enacted subsequent to such date, that are similar to or a replacement of the section cited or referred to.

(10) Net estate. -- The term "net estate" means the net estate of the decedent as defined in Section 2051 of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States.

(11) Nonresident. -- The term "nonresident" means a decedent who was a citizen of the United States, but was domiciled outside the State of West Virginia at the time of his or her death.

(12) Notice. -- The term "notice" means a written notice sent to the last known address of the addressee and shall be effective upon mailing.

(13) Other state. -- The term "other state" means any state of the fifty states in the United States (other than this state) and includes the District of Columbia and any possession or territory of the United States.

(14) Person. -- The term "person" includes natural person, corporation, society, association, partnership, joint venture, syndicate, estate, trust or other entity under which business or

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other activities may be conducted.

(15) Person required to file. -- The phrase "person required to file" means any person, including a personal representative, qualified heir, distributee or trustee required or permitted to file a federal estate tax return, or a West Virginia estate tax return, pursuant to the provisions of the Internal Revenue Code or this article.

(16) Personal representative. -- The terms "personal representative" and "fiduciary" are used interchangeably and mean:

(A) The personal representative of the estate of the decedent, appointed, qualified and acting within this state; or

(B) If there is no personal representative appointed, qualified and acting within this state, then any person in actual or constructive possession of the West Virginia gross estate of the decedent. The term "personal representative" includes the executor of a will, the administrator of the estate of a deceased person, the administrator of such estate with the will annexed, the administrator de bonis non of such estate, whether there be a will or not, the sheriff or other officer lawfully charged with the administration of the estate of a deceased person, and every other curator or committee of a decedent's estate for or against whom suits may be brought for causes of action which accrued to or against such decedent.

(17) Real property situated in this state. -- The phrase "real property situated in this state" means any and all interests in real property located in this state, including leasehold interests, royalty interests, production payments and working interests in coal, oil, gas and other natural resources.

(18) Resident. -- The term "resident" means a decedent who was domiciled in the State of West Virginia at the time of his or her death.

(19) State. -- The term "state" means any state, territory or possession of the United States and the District of Columbia.

(20) Tangible personal property. -- The term "tangible personal property" means corporeal personal property including money.

(21) Tax. -- The term "tax" means the tax imposed by this article, and includes any additions to tax, penalties and interest imposed by this article or article ten of this chapter.

(22) Tax commissioner. -- The term "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or his or her delegate.

(23) Taxable estate. -- The term "taxable estate" means the taxable estate of the decedent as defined in Section 2051 (or Section 2106 in the case of an alien) of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States.

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(24) Taxpayer. -- The term "taxpayer" means any person required to file a return for the tax imposed by this article and any person liable for payment of the tax imposed by this article.

(25) This code. -- The term "this code" means the Code of West Virginia, 1931, as amended.

(26) This state. -- The term "this state" means the State of West Virginia.

(27) Transfer. -- The term "transfer" means "transfer" as defined in Sections 2001, 2101, 2601 of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States. It includes the passage of any property, or any interest therein, or income therefrom, in possession or enjoyment, present or future, in trust or otherwise, whether by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment.

(28) Transferee. -- The term "transferee" means any person to whom a transfer is made and includes any legatee, devisee, heir, next of kin, grantee, donee, vendee, assignee, successor, survivor or beneficiary.

(29) United States. -- The term "United States", when used in a geographical sense, includes only the fifty states and the District of Columbia.

(30) Value. -- The term "value" means the value of property, the value of the gross estate or the value of the taxable estate as finally determined for federal estate tax purposes under the laws of the United States relating to federal estate taxes.

(c) Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relative to estate taxes, unless a different meaning is clearly required by the provisions of this article. Any reference in this article to the laws of the United States relating to federal estate taxes shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal estate taxes, as the same may be or become effective at any time or from time to time.

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## §11-11-3. Imposition of tax.

Whenever a federal estate tax is payable to the United States, there is hereby imposed a West Virginia estate tax equal to the portion, if any, of the maximum allowable amount of federal credit for state death taxes which is attributable to property located in this state, or within its taxing jurisdiction. In no event, however, shall the estate tax hereby imposed result in a total death tax liability to this state and the United States in excess of the death tax liability to the United States which would result if this article were not in effect: Provided, That the estate tax hereby imposed shall not be affected by other credits properly allowable in computing the federal estate tax except that the unified credit established in Section 2010 of the Internal Revenue Code of 1986, as amended, shall be applied before calculating the West Virginia estate tax.

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## §11-11-4. Tax on transfer of estate of residents; credit; property of residents defined.

(a) Imposition of tax. -- A tax in the amount of the federal credit is imposed on the transfer of the taxable estate of every resident decedent, subject, where applicable, to the credit provided for in subsection (b).

(b) Credit. -- If property of a resident is subject to a death tax imposed by another state for which a federal credit is allowed, the amount due under this section shall be credited with the lesser of:

(1) The amount of the death tax paid to the other state, or states, and credited against the federal estate tax and federal tax on generation-skipping transfers; and

(2) The amount computed by multiplying the amount of the federal credit by a fraction, the numerator of which is the value of that part of the gross estate over which another state (or states) has (or have) jurisdiction to the same extent to which West Virginia would exert jurisdiction under this article with respect to residents of such other state (or states). The denominator of the fraction shall be the value of the decedent's gross estate.

(c) Property of resident. -- The property of a resident includes:

(1) Real property situated in this state;

(2) Tangible personal property having its actual situs in this state; and

(3) Intangible personal property owned by the resident, regardless of where it is located.

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## §11-11-5. Tax on transfer of estate of nonresidents; property of nonresidents defined; exemption.

(a) Imposition of tax. -- A tax in an amount computed as provided in this section is imposed on the transfer of the taxable estate located in West Virginia of every nonresident decedent.

(b) Amount of tax. -- The tax shall be an amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of that part of the gross estate over which West Virginia has jurisdiction for estate tax purposes. The denominator shall be the value of the decedent's gross estate.

(c) Property of nonresident. -- For purposes of this section, property included in the gross estate of a nonresident which is taxable under this section shall include:

(1) Real property and real property interests located in this state, including (but not limited to) mineral interests, royalties, production payments, leasehold interests or working interests in coal, oil, gas or any other natural resource.

(2) Tangible personal property having an actual situs in this state.

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## §11-11-6. Tax on transfer of estate of aliens.

(a) Imposition of tax. -- A tax in the amount computed as provided in this section is imposed on the transfer of the taxable estate located in West Virginia of every alien. Taxable transfers include:

(1) Real property situated in this state;

(2) Tangible personal property having an actual situs in this state; and

(3) Intangible personal property physically present within this state of every decedent who, at the time of his or her death, was not a citizen of the United States.

(b) Amount of tax. -- The tax shall be an amount computed by multiplying the federal credit by a fraction, the numerator of which shall be the value of that part of the gross estate over which this state has jurisdiction for estate tax purposes. The denominator shall be the value of the decedent's gross, wherever situate, that is taxable by the United States.

(c) Stock of West Virginia corporations. -- For purposes of this section, stock in a corporation organized under the laws of this state shall be deemed to be physically present within this state.

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## §11-11-7. Nonprobate inventory of estates; penalties.

(a) The personal representative of every resident decedent who owned or had an interest in any nonprobate personal property, and the personal representative of every nonresident decedent who owned or had an interest in any nonprobate personal property which is a part of the taxable estate located in West Virginia, shall, under oath, list and appraise on a nonprobate inventory form prescribed by the Tax Commissioner all tangible and intangible nonprobate personal property owned by the decedent or in which the decedent had an interest, at its fair market value on the date of the decedent's death. The nonprobate personal property to be included on the nonprobate inventory form includes, but is not limited to, the following:

(1) Personal property held as joint tenants with right of survivorship with one or more third parties;

(2) Personal property payable on the death of the decedent to one or more third parties;

(3) Personal property held by the decedent as a life tenant;

(4) Insurance on the decedent's life payable to beneficiaries other than the executor or administrator of the decedent's estate;

(5) Powers of appointment;

(6) Annuities;

(7) Transfers during the decedent's life in which any beneficial interest passes by trust or otherwise to another person by reason of the death of the decedent;

(8) Revocable transfers in trust or otherwise;

(9) Taxable gifts under Section 2503 of the United States Internal Revenue Code of 1986; and

(10) All other nonprobate personal property included in the federal gross estate of the decedent.

(b) For purposes of this section, "nonprobate personal property" means all personal property which does not pass by operation of the decedent's will or by the laws of intestate descent and distribution or is otherwise not subject to administration in a decedent's estate at common law.

(c) The personal representative shall prepare the nonprobate inventory form and file it, together with the appraisement form required by section fourteen, article one, chapter forty-four of this code, for estates of decedents dying on or after July 13, 2001, with the clerk of the county commission or the fiduciary supervisor within ninety days of the date of

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qualification of the personal representative in this state: Provided, That for estates of decedents dying on or after July 13, 2001, but before the date the amendments to this section become effective, the requirement to file the nonprobate inventory form with the clerk or supervisor applies only if that form has not already been filed with Tax Commissioner.

(d) The nonprobate inventory form shall be maintained and preserved by the clerk of the county commission or the fiduciary supervisor, but shall not be recorded in the records of the clerk of the county commission. The nonprobate inventory form is confidential tax return information subject to the provisions of section five-d, article ten, chapter eleven of this code and may not be disclosed by the clerk of the county commission and his or her officers and employees or former officers and employees. Nothing in this section may be construed to hinder, abrogate or prevent disclosure of information as authorized in section thirty-five, article eleven, chapter eleven of this code.

(e) Any personal representative who fails to comply with the provisions of this section, without reasonable cause, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25 nor more than $500.

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**§11-11-8. Estate tax returns.**

(a) When no return required. -- No West Virginia estate tax return needs to be filed if the estate of the decedent is not subject to the tax imposed by this article.

(b) Returns by personal representative. -- The personal representative of every estate subject to the tax imposed by this article, who is required by the laws of the United States to file a federal estate tax return, shall file with the Tax Commissioner, on or before the date the federal estate tax return is required to be filed:

(1) A return for the tax due under this article; and

(2) An executed copy of the federal estate tax return.

(c) Returns by beneficiaries.

(1) If the personal representative fails to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein. The providing of such information shall not, in and of itself, exonerate the personal representative from any additions to tax or penalties prescribed by law for failure to file a complete return.

(2) Upon notice from the Tax Commissioner, a beneficiary of the estate, or other person holding a legal or beneficial interest therein, shall file a return under this article providing such information as the Tax Commissioner may request pertaining to the interest of the beneficiary, or other person, in the estate of the decedent.

(d) Returns due. -- Returns made under this article shall be filed within nine months after the date of the decedent's death.

(e) Place of filing. -- Estate tax returns shall be filed with the Tax Commissioner at his office in Charleston, West Virginia.

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## §11-11-9. Extension of time for filing return.

(a) Extension of time. -- If the personal representative has obtained an extension of time for filing the federal estate tax return, the filing required by section eight shall be extended until the end of the time period granted in the extension of time for filing the federal estate tax return.

(b) Copy of federal extension. -- Upon obtaining an extension of time for filing the federal estate tax return, the personal representative shall provide the Tax Commissioner with a true copy of the instrument providing for this extension within thirty days after receipt of it.

(c) Payment of tax. -- An extension of the time for filing a return shall not operate to extend the time for payment of the tax.

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## §11-11-10. Amended returns.

(a) When required. -- If the personal representative files an amended federal estate tax return, he shall, within sixty days thereafter, file an amended return under this article, and give such information as the Tax Commissioner may require. Such amended return shall include a copy of the amended federal estate tax return.

(b) Payment of additional tax. -- Any additional tax due under this article shall be remitted when the amended return is filed.

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## §11-11-11. Returns executed by Tax Commissioner.

(a) Authority of Tax Commissioner to execute return. -- If any person fails to file a return at the time prescribed by law, or files (willfully or otherwise) a false or fraudulent return, the Tax Commissioner shall make the return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(b) Status of returns. -- A return so made and subscribed by the Tax Commissioner shall be prima facie good and sufficient for all legal purposes.

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## §11-11-12. Report of change in federal estate tax.

(a) Report of federal change. -- If the amount of the federal taxable estate reported on federal estate tax return is changed or corrected by the United States Internal Revenue Service, or other competent authority, the personal representative shall report the change or correction within ninety days after the final determination of the change, or correction, or as otherwise required by the Tax Commissioner. Such report shall concede the accuracy of the change, or correction, or state whether and wherein the determination is believed to be erroneous. The imposition of an additional federal estate tax under Section 2032A of the Internal Revenue Code shall constitute a change. The Tax Commissioner may by regulation prescribe exceptions to the requirements of this section as he deems appropriate.

(b) Payment of deficiency. -- If, based upon any deficiency in federal estate tax and the ground therefore, it shall appear that the amount of tax previously paid under this article is less than the amount of tax due and owing, the difference together with interest at the rate of one percent per month from the date the tax became delinquent under this article shall be remitted at the time the notice required by this section is filed.

(c) Failure to give notice. -- In the event the personal representative required to file the return and pay the tax required by this article shall fail to give the notice required by this section, any additional tax which may be due and owing may be assessed by the Tax Commissioner at any time notwithstanding the provisions of section fifteen, article ten of this chapter.

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## §11-11-13. Payment of tax.

(a) Payment by personal representative. -- The tax imposed by this article shall be paid by the personal representative. Liability for payment of the tax continues until the tax is paid.

(b) Due date. -- The tax imposed by this article is due and payable at the date of the decedent's death.

(c) Delinquent date. -- The tax imposed by this article becomes delinquent upon the expiration of nine months after the date on which it becomes due and payable, if not paid within that time.

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## §11-11-14. Extension of time for payment.

(a) General. -- If an extension of time for payment of federal estate tax has been granted and the Tax Commissioner finds that payment by the due date of the tax imposed by this article, or any part thereof, would impose undue hardship upon the estate, the Tax Commissioner may extend the time for payment of any such part, but no extension shall be for more than one year at a time. The aggregate of extensions with respect to any estate shall not exceed ten years from the due date.

(b) Payment of tax where extension granted. -- If an extension of time for payment has been granted under this section, the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, unless a further extension is granted. If the time for payment is thus extended, there shall be collected, as part of such amount, interest at the rate of twelve percent per annum of the amount due, from the date which is nine months after the date of death of the decedent until the date the tax is paid.

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## §11-11-15. Interest.

(a) Rate. -- The tax imposed by this article does not bear interest if it is paid before the expiration of nine months after the date of death of the decedent. If that tax is paid after that date, the tax bears interest at the rate of twelve percent per annum from the date by which it should have been paid (determined without regard to any extension of time for payment) until the date it is paid.

(b) Application of payment. -- Every payment of delinquent tax shall be applied, first, to any interest due on that tax, secondly, to any additions to tax or penalty imposed by article ten of this chapter, and then, if there is any balance, to the tax itself.

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## §11-11-16. Receipts for taxes.

(a) Receipts in triplicate. -- The Tax Commissioner shall issue to the personal representative, upon payment of the tax imposed by this article, receipts in triplicate, any of which shall be sufficient evidence of such payment, and shall entitle the personal representative to be credited and allowed the amount thereof by any county commission or court having jurisdiction to audit or settle his accounts.

(b) Application of personal representative for receipt. -- If the personal representative files a complete and correct return under this article, and there has been a final determination of the federal estate tax liability, he may make written application to the Tax Commissioner for determination of the amount of the tax and discharge from personal liability therefor. The Tax Commissioner, as soon as possible, and in any event within one year after receipt of such application, shall notify the personal representative of the amount of the tax; and upon payment thereof the personal representative shall be discharged from personal liability for any additional tax thereafter found to be due, and shall be entitled to receive from the Tax Commissioner a receipt in writing showing such discharge: Provided, That such discharge shall not operate to release the gross estate of the lien of any additional tax that may thereafter be found to be due nor release the personal representative if there has been negligence or fraud.

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**§11-11-17. Special lien for estate tax.**

(a) Lien created. -- Unless the tax imposed by section three of this article is sooner paid in full, or becomes unenforceable by reason of lapse of time, it shall be a lien for ten years after the death of the decedent upon all property, real or personal, of the decedent located in this state, except as provided in subsection (b), (c) or (d) of this section.

(b) Liability of transferees and others; divestment and reattachment of lien. -- If the tax imposed by this article is not paid when due, then the spouse, transferee, trustee (except the trustee of an employees' trust which meets the requirements of Section 401(a) of the Internal Revenue Code of 1986, as amended), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or possesses on the date of the decedent's death, property included in the gross estate for federal estate tax purposes, to the extent of the value at the time of the decedent's death of the property, shall be personally liable for the tax. Any part of the property transferred by (or transferred by a transferee of) the spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, to a purchaser or holder of a security interest shall be divested of the lien provided in subsection (a) of this section. However, a like lien shall attach to all the property not so transferred of such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, or transferee of any person.

(c) Continuance after discharge of fiduciary; divestment and reattachment of lien. -- The provisions of section twenty of this article eleven (relating to discharge of fiduciary from personal liability) shall not operate as a release of any part of the gross estate from the lien provided in subsection (a) of this section for any deficiency that may thereafter be determined to be due, unless such part of the gross estate (or any interest therein) has been transferred to a purchaser or a holder of a security interest, in which case the part (or the interest) so transferred shall be divested of the lien provided in subsection (a) of this section or to any claim or demand for any such deficiency. However, a like lien shall attach to the consideration received from the purchaser or holder of a security interest, by the heirs, legatees, devisees, or distributees.

(d) Other exceptions. --

(1) The part of the property of the decedent as may at the time be subject to the lien provided for in subsection (a) of this section shall be divested of such lien to the extent used for payment of charges against the estate or expenses of its administration allowed by the county commission or court having jurisdiction thereof.

(2) The part of the personal property of the decedent as may at the time be subject to the lien provided for in subsection (a) of this section shall be divested of the lien upon the conveyance or transfer of the property to a bona fide purchaser or holder of a security interest for an adequate and full consideration in money or money's worth. The liens shall then attach to the consideration received for the property from the purchaser or holder of a

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security interest.

(e) Release of lien. -- Subject to such regulations as the Tax Commissioner may prescribe, the Tax Commissioner shall issue a certificate of release of any lien arising under this section not later than thirty days after the day on which the Tax Commissioner finds that the liability for the amount assessed, together with all interest and applicable penalties and additions to tax in respect thereof, has been fully satisfied or has become legally unenforceable.

(f) Certificate of discharge. -- Subject to such regulations as the Tax Commissioner may prescribe, the Tax Commissioner may issue a certificate of discharge of any or all of the property subject to the lien imposed by this section if the Tax Commissioner finds that the liability secured by the lien has been fully satisfied or provided for.

(g) Effect of certificate. --

(1) Conclusiveness. -- Except as provided in subdivisions (2) and (3) of this subsection, if a certificate is issued pursuant to subsection (f) of this section by the Tax Commissioner and is filed in the same office as the notice of lien to which it relates (if such notice of lien has been filed), the certificate shall have the following effect:

(A) In the case of a certificate of release, the certificate shall be conclusive that the lien referred to in the certificate is extinguished;

(B) In the case of a certificate of discharge, the certificate shall be conclusive that the property covered by the certificate is discharged from the lien; and

(C) In the case of a certificate of nonattachment, the certificate shall be conclusive that the lien of the State of West Virginia does not attach to the property of the person referred to in the certificate.

(2) Revocation of certification of release or nonattachment. -- If the Tax Commissioner determines that a certificate of release or nonattachment of a lien imposed by this section was issued erroneously or improvidently, or if a certificate of release of the lien was issued pursuant to a collateral agreement entered into in connection with a compromise under section five-q, article ten of this chapter, which has been breached, and if the period of limitation on collection after assessment has not expired, the Tax Commissioner may revoke the certificate and reinstate the lien:

(A) By mailing written notice, by certified mail, return receipt requested, of the revocation to the person against whom the tax was assessed at his or her last known address; and

(B) By filing notice of the revocation in the same office in which notice of lien to which it relates was filed (if the notice of lien had been filed).

Such reinstated lien: (i) Shall be effective on the date the notice of revocation is mailed to

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the taxpayer in accordance with the provisions of the foregoing paragraph (A), but not earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of the foregoing paragraph (B); and (ii) shall have the same force and effect (as of the date), until the expiration of the period of limitation on collection after assessment, as a lien imposed by section eleven, article ten of this chapter (relating to lien for taxes).

(3) Certificates void under certain conditions. -- Notwithstanding any other provision of this article, any lien imposed by this section shall attach to any property with respect to which a certificate of discharge has been issued if the person liable for payment of the tax reacquires the property after the certificate has been issued.

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## §11-11-17a. Discharge of nonresident decedent's real property in absence of ancillary administration, termination.

(a) The domiciliary personal representative of a nonresident decedent may apply to the Tax Commissioner for a certificate releasing all real property situate in this state included in decedent's gross estate from any lien imposed by section seventeen of this article. In the absence of ancillary administration in this state, the Tax Commissioner may consider reliable and satisfactory evidence furnished by the personal representative regarding the value of real property and the amount of tax due under this article, or that no tax liability exists under this article with respect to any real property.

(b) If the Tax Commissioner determines that reliable and satisfactory evidence exists, an affidavit of value submitted by the personal representative made pursuant to and in conjunction with the evidence shall be marked as inspected by the commissioner and shall be filed by the estate in the county or counties of this state where the real property is situate.

(c) In determining tax liability, the Tax Commissioner may also consider an appraisal of the real property submitted in writing to the Tax Commissioner, paid for by the personal representative and made at the personal representative's request. The appraisal shall be performed by a licensed real estate appraiser acceptable to the Tax Commissioner and it shall be filed in the county or counties where the real property is situate.

(d) If the Tax Commissioner is satisfied that no tax liability exists, or that the tax liability of the estate has been fully discharged, the Tax Commissioner may issue a certificate under subsection (f), section seventeen of this article.

(e) On and after July 1, 2017, the provisions of this section have no force or effect.

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## §11-11-18. Discharge of estate; notice of lien; limitation on lien; etc.

(a) Where no receipt for payment of the taxes, or no receipt of nonliability for taxes has been issued or recorded as provided for in this article, the property constituting the estate of the decedent in this state shall be deemed fully acquitted and discharged of all liability for estate taxes under this article after a lapse of ten years from the date of the filing with the Tax Commissioner of notice of the decedent's death, or after a lapse of ten years from the date of the filing with the Tax Commissioner of an estate tax return, whichever date shall be earlier, unless the Tax Commissioner shall make out and file and have recorded in the office of the clerk of the county wherein any part of the estate of the decedent may be situated in this state, a notice of lien against the property of the estate, specifying the amount or approximate amount of taxes claimed to be due to the state under this article, which notice of lien shall continue said lien in force for an additional period of five years, or until payment is made.

(b) Notwithstanding anything to the contrary in this section or this article, no lien for estate taxes under this article shall continue for more than twenty years from the date of death of the decedent, whether the decedent be a resident or a nonresident of this state.

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## §11-11-19. Final accounting delayed until liability for tax determined.

(a) If a personal representative is required to file a federal estate tax return for the estate of a decedent, then no final account of that personal representative shall be allowed or approved in any probate proceeding with respect to that estate, by the county commission, or the clerk thereof, before whom the proceeding is pending, unless the county commission finds that the tax imposed on the transfer of property by this article has been paid in full, or that no tax is due.

(b) No final account of a personal representative of an estate shall be allowed by any county commission, or clerk thereof, unless such account shows and the county commission, or clerk thereof, finds that all taxes imposed by this article upon the personal representative, which have become payable, have been paid.

(c) The certificate of release, discharge or nonattachment issued to the personal representative by the Tax Commissioner under section seventeen of this article shall be conclusive in the proceeding as to the liability or the payment of tax, to the extent provided in the certificate.

WV Legislature

**§11-11-20. Liability of personal representatives; etc.**

(a) Personal representative. -- Any personal representative who distributes any property of an estate without first paying, securing another's payment of, or furnishing security for payment of the taxes due under this article, is personally liable for payment of the taxes due, to the extent of the value of any property that may come or that may have come into the possession of the personal representative. Security for payment of taxes due under this article shall be in an amount equal to or greater than the value of all property that is or has come into the possession of the personal representative, determined as of the time the security is furnished.

(b) Other person having control, custody or possession of property. -- Any person in this state who has control, custody or possession of any property includible in the gross estate of a decedent for federal estate tax purposes, and who delivers any of the property to the personal representative or other legal representative of the decedent outside this state without first paying, securing another's payment of, or furnishing security for payment of the taxes due under this article, is liable for the taxes due under this article to the extent of the value of the property delivered. Security for payment of the taxes due under this article shall be in an amount equal to or greater than the value of all property delivered to the personal representative or other legal representative of the decedent outside this state by such a person.

(c) Persons not having control. -- For the purpose of this section, persons do not have control, custody or possession of a decedent's property if they are not responsible for paying the tax due under this article, such as transferees, which term includes, but is not limited to, stockbrokers or stock transfer agents, banks and other depositories of checking and savings accounts, safe deposit companies and life insurance companies.

(d) Reliance upon Tax Commissioner's certificates. -- For the purposes of this section, any person in this state who has the control, custody or possession of any property includible in the gross estate of the decedent for federal estate tax purposes, and who delivers any of the property to the personal representative or other legal representative of the decedent, may rely upon the release or certificate furnished by the Tax Commissioner under section seventeen of this article to the personal representative as evidence of compliance with the requirements of this article, and make the deliveries and transfers as the personal representative may direct without being liable for any taxes due under this article with respect to any property.

(e) Discharge of personal liability for federal estate taxes. -- If a personal representative receives a discharge from personal liability for federal estate taxes pursuant to Section 2204 of the Internal Revenue Code of 1986, as amended, and if the personal representative makes written application to the Tax Commissioner for determination of the amount of the tax due under this article and for discharge from personal liability, the Tax Commissioner, within two months after receiving satisfactory evidence of the Section 2204 discharge, but not after the expiration of the period for issuance of a deficiency assessment, shall notify the personal



WV Legislature

representative of the amount of the tax due under this article, including the amount of any interest, additions to tax or penalties that are due. The personal representative, upon payment of the amount of which he is notified (other than any portion for which an extension of time for payment has been granted), and upon furnishing any bond that may be required by the Tax Commissioner to secure payment of any amount for which the time for payment has been extended, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing the discharge.

WV Legislature

**§11-11-21. Duty of resident personal representative of nonresident decedent.**

(a) General. -- A resident personal representative, holding personal property (tangible or intangible) of a deceased nonresident subject to tax under this article, shall not deliver such property to the personal representative of the domiciliary estate, or to any other person, until after the resident personal representative shall have deducted the tax therefrom, or collected it from the personal representative of the domiciliary estate and remitted it to the Tax Commissioner.

(b) Failure of domiciliary personal representative to pay tax. -- When the transfer of personal property of a nonresident decedent is taxable under this article and the personal representative of the domiciliary estate neglects or refuses to pay the tax upon demand of a resident personal representative, or if for any reason the tax is not paid within nine months after the decedent's death, the resident personal representative may, upon such notice as the circuit court of Kanawha County may direct, be authorized to sell such property, or if the same can be divided, such portion thereof as may be necessary, and shall deduct the tax from the proceeds of such sale and shall account for the balance, if any, in lieu of such property.

WV Legislature

## §11-11-22. Duties and powers of corporate personal representatives of nonresident decedents.

If the personal representative of the estate of a nonresident is a corporation duly authorized, qualified and acting as such personal representative in the jurisdiction of the domicile of the decedent, it shall be under the duties and obligations as to the giving of notices and filing of returns required by this article, and may bring and defend actions and suits as may be authorized or permitted by this article, and articles nine and ten of this chapter, to the same extent as an individual personal representative, notwithstanding that such corporation may be prohibited from exercising in this state any powers as personal representative. Nothing herein contained shall be taken or construed as authorizing corporations not authorized to do business in this state to qualify or act as personal representative, administrator or in any other fiduciary capacity, if otherwise prohibited by the laws of this state, except to the extent herein expressly provided.

WV Legislature

## §11-11-23. Proof of payment of death taxes to state of domicile.

(a) General. -- At any time before the expiration of eighteen months after the qualification in this state of any executor of the will of, or administrator of the estate of, any nonresident decedent, such executor or administrator shall file with the clerk of the county commission of the county in which he qualified proof that all death taxes which are due to the state of domicile of such decedent, or to any political subdivision thereof, have been paid, or secured, or that no such taxes are due, as the case may be, unless it appears that letters of probate or administration have been issued in the state of domicile.

(b) Form of proof. -- The proof required by subsection (a) may be in the form of a certificate issued by the official or body charged with the administration of the death tax laws of the domiciliary state.

(c) Notice to domiciliary state if proof not filed. -- If such proof is not filed within eighteen months after the qualification in this state of any personal representative of a nonresident decedent, then the clerk of the county commission shall forthwith notify by mail the official or body of the domiciliary state charged with the administration of the death tax laws thereof with respect to such estate and shall state in such notice, so far as it is known to him

(1) The name, date of death and last domicile of such decedent;

(2) The name and address of each executor or administrator;

(3) A summary of the values of the real estate, tangible personal property and intangible personal property, wherever situated, belonging to such decedent at the time of his death; and

(4) The fact that such executor or administrator has not filed, within the time prescribed by law, proof of payment of death taxes to the state of domicile of the nonresident decedent.

To such notice the clerk of the county commission shall attach a plain copy of the will and codicils of such decedent, if he died testate, or, if he died intestate, a list of his heirs and next of kin, so far as is known to such clerk.

(d) Petition of domiciliary state. -- Within sixty days after the mailing of the notice provided in the preceding subsection, the official or body charged with the administration of the death tax laws of the domiciliary state may file with the county clerk in this state a petition for an accounting in such estate. Such official body of the domiciliary state shall, for the purpose of this article, be a party interested for the purpose of petitioning such county clerk for such an accounting. If such petition be filed within the period of sixty days, such county clerk shall order such accounting and upon such accounting being filed and approved, shall decree the remission of the fiduciary appointed by the domiciliary probate court of the balance of the intangible personal property after payment of creditors and expenses of administration in this state.

WV Legislature

(e) Final accounting not granted without compliance. -- Unless the provisions of either subsection (c) or (d) of this section shall have been complied with, no such executor or administrator shall be entitled to a final accounting or discharge by any county commission of this state.

WV Legislature

## §11-11-24. Domicile of decedent.

(a) General. -- For purposes of this article, every person shall be presumed to have died a resident and not a nonresident of this state:

(1) If such person has dwelled or lodged in this state during and for the greater part of any period of twelve consecutive months in the twenty-four months next preceding the decedent's death, notwithstanding the fact that from time to time during such twenty-four months such person may have sojourned outside of this state, and without regard to whether or not such person:

(A) May have voted in this state;

(B) May have been entitled to vote in this state; or

(C) May have been assessed for taxes in this state.

(2) If such person has been a resident of this state, sojourning outside this state.

(b) Proof of domicile. -- The burden of proof in an estate tax proceeding shall be upon any person claiming exemption by reason of alleged nonresidency. Domicile shall be determined exclusively in the proceedings provided in this chapter, and orders relating to domicile previously entered in any probate proceedings shall not be conclusive for purposes of the tax imposed by this article.

WV Legislature

## §11-11-25

Repealed.

Acts, 1988 Reg. Sess., Ch. 118.

WV Legislature

## §11-11-26. Sale of real estate by personal representative to pay tax.

Every personal representative shall have the same right and power to take possession of or sell, convey and dispose of real estate as assets of the estate for the payment of the tax imposed by this article, as he may have for the payment of the debts of the decedent.

WV Legislature

## §11-11-27. Prima facie liability for tax.

(a) The estate of each decedent whose property is subject to the laws of this state and which is required to file a federal estate tax return shall be deemed prima facie liable for payment of estate taxes under this article and shall be subject to a lien therefor in the amount as may be later determined to be due and payable on the estate as provided in this article.

(b) This presumption of liability shall begin on the date of the death of the decedent and shall continue until the full settlement of all taxes which may be found to be due under this article, the settlement to be shown by receipts for payment of all taxes due under this article, to be issued by the Tax Commissioner as provided for in this article.

(c) Whenever the Tax Commissioner determines that an estate described in subsection (a) of this section is not liable for payment of tax under this article, the Tax Commissioner shall issue to the personal representative a certificate in writing to that effect, showing the nonliability to tax, which certificate of nonliability shall have the same force and effect as a receipt showing payment of tax. This certificate of nonliability may be recorded and shall be admissible in evidence in like manner as receipts showing payment of taxes due under this article.

WV Legislature

## §11-11-28. Apportionment of West Virginia estate taxes; deduction of taxes by the fiduciary from shares of beneficiaries.

Whenever there is an estate tax levied or assessed under the provisions of any estate tax law of this state heretofore or hereafter enacted, the amount of the tax so paid shall be prorated among the persons interested in the estate to whom such property is or may be transferred or to whom any benefit accrues in conformity with the provisions of section sixteen-a, article two, and section eighteen, article three-a, chapter forty-four of this code.

WV Legislature

## §11-11-29. Time for assessment of tax.

(a) General. -- The amount of estate tax due under this article shall be assessed on or before whichever of the following dates occurs last:

(1) The period specified in section fifteen, article ten of this chapter, during which an assessment may generally be issued;

(2) Within a period expiring ninety days after the last day on which the assessment of a deficiency in federal estate tax may lawfully be made under applicable provisions of the Internal Revenue Code; or

(3) Within ninety days after receipt of notice from a personal representative that the federal estate tax liability of an estate has been changed.

(b) Exceptions. -- In the case of a false or fraudulent return, or failure to file a return on or before the last day prescribed for filing, or failure of the personal representative to give the Tax Commissioner notice of a change in the federal estate tax liability of an estate, the tax may be assessed at any time.

WV Legislature

## §11-11-30. Refund of excess tax due to overpayment of federal estate tax.

(a) Claim for refund. -- Notwithstanding the provisions of section fourteen, article ten of this chapter, in the event of a final determination by the United States Internal Revenue Service, or other competent authority, of an overpayment of the estate's federal estate tax liability, the period of limitation upon claiming a refund reflecting such final determination in the taxes due under this article shall not expire until six months after such determination is made by the United States Internal Revenue Service or other competent authority.

(b) When determination becomes final. -- For purposes of this section, an administrative determination shall be deemed to have become final on the date of receipt by the personal representative, or other interested party, of the final payment to be made refunding federal estate tax or upon the last date on which the personal representative, or any other interested party, shall receive notice from the United States that an overpayment of federal estate tax has been credited by the United States against any liability other than the federal estate tax of said estate. A final judicial determination shall be deemed to have occurred on the date on which any judgment entered by a court of competent jurisdiction, determining that there has been an overpayment of federal estate tax, becomes final.

WV Legislature

## §11-11-31. Agreements as to amount of tax due.

For the purpose of facilitating the settlement and distribution of estates held by personal representatives, the Tax Commissioner may, on behalf of the state, agree to the amount of taxes due or to become due from such personal representative under the provisions of this article. Payment in accordance with such agreement shall be full satisfaction of the taxes to which the agreement relates.

WV Legislature

**§11-11-32.**

Repealed.

Acts, 1996 Reg. Sess., Ch. 233.

WV Legislature

## §11-11-33. Administration of article by Tax Commissioner.

(a) The Tax Commissioner shall administer and enforce the tax imposed by this article. He is authorized to require such facts and information to be reported as he deems necessary to enforce the provisions of this article.

(b) Rules and regulations promulgated by the Tax Commissioner shall follow as nearly as practicable the rules and regulations of the secretary of the treasury of the United States. The construction of this article shall further its purpose to simplify the preparation of tax returns, aid in its interpretations through use of federal precedents and improve its enforcement.

(c) The Tax Commissioner may prescribe the form and content of any return or other documents, including a copy of part or all of a federal return, required to be filed under the provisions of this article.

(d) Reports and returns required to be filed under this article shall be preserved for four years and thereafter until the Tax Commissioner orders them destroyed.

WV Legislature

## §11-11-34. Appointment of special appraisers.

The Tax Commissioner may employ special appraisers for the purpose of determining the value of any property which is, or is believed by the Tax Commissioner to be, subject to the tax imposed by this article. Such special appraisers shall be paid such compensation as the Tax Commissioner deems proper.

WV Legislature

## §11-11-35. Privacy of information.

(a) Notwithstanding the provisions of article ten of this chapter, the tax return of an estate shall be open to inspection by or disclosure to:

(1) The personal representative of the estate;

(2) Any heir at law, or beneficiary under the will of the decedent; or

(3) The attorney for the estate or its personal representative or the attorney-in-fact duly authorized by any of the persons described in subdivision (1) or (2) of this section.

(b) Notwithstanding the provisions of article ten of this chapter, the personal representative of the decedent shall make the nonprobate inventory form of an estate available for inspection by or disclosure to:

(1) The personal representative of the estate;

(2) Any heir at law, beneficiary under the will of the decedent, a creditor who has timely filed a claim against the estate of the decedent with the fiduciary commissioner or fiduciary supervisor, or any party who has filed a civil action in any court of competent jurisdiction in which any asset of the decedent is in issue; or

(3) The attorney for the estate or its personal representative or the attorney-in-fact duly authorized by any of the persons described in subdivision (1) or (2) of this subsection.

WV Legislature

## §11-11-36. Money penalty for failure to produce records.

If any person:

(1) Fails to comply with any duty imposed upon him by this article; or

(2) Having in his possession or control any record, file or paper containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprising part of the gross estate of the decedent, fails to exhibit the same upon request to the Tax Commissioner or any examiner, appraiser or attorney appointed pursuant to this article, who desires to examine the same in the performance of his duties under the article, such person shall be liable to a money penalty of not less than $10 nor more than $500 to be recovered, with costs of suit, in a civil action in the name of the state.

WV Legislature

## §11-11-37. Interpretation and construction.

(a) No inference, implication or presumption of legislative construction or intent shall be drawn or made by reason of the location or grouping of any particular section, provision or portion of this article; and no legal effect shall be given to any descriptive matter or heading relating to any section, subsection or paragraph of this article.

(b) When not otherwise provided for in this article, the rules of interpretation and construction applicable to the estate tax laws of the United States shall apply to, and be followed in, the interpretation of this article.

(c) The provisions of this article shall be liberally construed in order to ensure that the state of domicile of any decedent shall receive any death taxes, together with interest and penalties thereon, due it.

WV Legislature

## §11-11-38. Estates to which article applies; former law preserved.

(a) Persons dying after June 30, 1985. -- Except as otherwise specifically provided, the provisions of this article shall apply to the estate of every person dying on or after July 1, 1985.

(b) Persons dying before July 1, 1985. -- With respect to persons dying prior to July 1, 1985, the provisions of article eleven, chapter eleven of this code, in effect on January 1, 1985, are hereby continued in force, and fully preserved, until their objects have been fully accomplished.

WV Legislature

## §11-11-39. Effectiveness of this article.

This article shall remain in force and effect until either one of the following events occurs:

(1) This article is repealed by the Legislature; or

(2) The government of the United States ceases to allow credit against its estate tax for payment of state death taxes.

WV Legislature

## §11-11-40. General procedure and administration.

The provisions of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter, shall apply to the tax imposed by this article with like effect as if said act were set forth in extenso in this article, except where it is expressly and specifically provided in this article that a particular provision of this article shall govern and control.

WV Legislature

## §11-11-41. Criminal penalties.

Each and every provision of the "West Virginia Tax Crimes and Penalties Act" set forth in article nine of this chapter, shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

WV Legislature

## §11-11-42. Severability.

If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect, impair or invalidate other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

WV Legislature

## §11-11-43. Effective date.

The amendments to this article made by this act shall take effect as provided in the Constitution of this state and, upon the effective date, these amendments shall apply to the estates of all decedents dying after June 30, 1985, for which no estate tax lien release has been issued by the Tax Commissioner prior to the effective date of these amendments in the year 1996, and to estates of all decedents dying on or after the effective date of these amendments.

WV Legislature