ENROLLED BILL
(Extraordinary Session, 1933)

House Bill No. 115

(By Mr. Speaker McNutt)

Passed January 3, 1933

In Effect from Passage
AN ACT to amend and reenact sections one, two, three, four, five, eleven, thirteen and twenty, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, relating to inheritance, transfer and estate taxes, and to add thereto new sections to be designated sections fourteen-(a) and twenty-eight.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, eleven, thirteen and twenty, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, are hereby amended and reenacted and sections fourteen-(a) and twenty-eight, are hereby added thereto, to read as follows:

Section 1. A tax, payable into the treasury of the state, shall 2 be imposed upon the transfer, in trust, or otherwise, of any
3 property, or interest therein, real, personal, or mixed, if such transfer be; (a) By will or by laws of this state regulating descent and distribution from any person who is a resident of the state at the time of his death and who shall die seized or possessed of property; (b) By will or by laws regulating descent and distribution of property within the state, or within its taxing jurisdiction, and the decedent was a nonresident of the state at the time of his death; (d) By a resident, or be of property within the state, or within its jurisdiction, by a nonresident, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, bargainor or donor, or intended to take effect in possession or enjoyment at or after such death. Every transfer by deed, grant, bargain, sale or gift, made within three years prior to the death of the grantor, bargainor, vendor, or donor, of value of five hundred dollars, or in excess thereof, at the time of such transfer in the nature of final disposition, or distribution of an estate, and without adequate valuable consideration, shall be construed to have been made in contemplation of death within the meaning of this article; (e) If any person shall transfer any property which he owns, or shall cause any property, to which he is absolutely
entitled, to be transferred to, or vested in himself and any other
person jointly so that the title therein, or in some part thereof,
vest no survivorship in such other person, a transfer shall be
deemed to occur and to be taxable under the provisions of this
article upon the vesting of such title; (f) Whenever any person
shall exercise a power of appointment derived from any dispo-
sition of property made, such appointment when made shall be
deemed a transfer taxable under the provisions of this article,
in the same manner as though the property to which such ap-
pointment relates belonged absolutely to the donee of such
power and had been bequeathed or devised by such donee by
will; and whenever any person possessing such a power of ap-
pointment so derived shall omit or fail to exercise the same
within the time provided therefor, in whole or in part, a transfer
taxable under the provisions of this article shall be deemed to
take place to the extent of such omission or failure, in the same
manner as though the person thereby becoming entitled to the
possession or enjoyment of the property to which such power
related had succeeded thereto by a will of the donee of the
power failing to exercise such power, and shall take effect at
the time of such omission or failure.
Sec. 2. When the property or any beneficial interest therein passes by any such transfer where the amount of the property considered as a unit shall exceed in value the exemption herein- after specified, and shall not exceed in value fifty thousand dollars, the tax hereby imposed shall be; (a) Where the person or persons entitled to any beneficial interest in such property shall be the wife, husband, child, stepchild, or the descendants of a living or deceased child per stirpes, or father or mother of the decedent, at the rate of three per cent of the market value of such interest in such property; (b) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the decedent, and the term brother or sister shall include a brother or sister of the half blood, at the rate of four per cent of the market value of such interest in such property; (c) Where the person or persons entitled to any beneficial interest in such property shall be further removed in relationship from the decedent than brother or sister, the rate of seven per cent of the market value of such interest in such property; (d) Where the person or persons entitled to any beneficial interest in such property shall be of no blood relation or strangers to the decedent, or
22 institutions, corporate or otherwise, the rate of ten per cent of
23 the market value of such interest in such property.

Sec. 3. When the market value of any such property con-
2 sidered as a unit exceeds fifty thousand dollars, the rate of tax
3 upon such excess shall be as follows: (a) Upon all in excess
4 of fifty thousand dollars, up to and not exceeding one hundred
5 fifty thousand dollars, the rate shall be as follows: Transfers
6 to those persons in subdivision (a) of section two, five per
7 cent; transfers to those persons in subdivision (b) of section
8 two, six per cent; transfers to those persons in subdivision
9 (c) of section two, nine per cent; transfers to those persons in
10 subdivision (d) of section two, twelve per cent; (b) Upon all
11 in excess of one hundred fifty thousand dollars, up to and not
12 exceeding three hundred thousand dollars, the rate shall be
13 as follows: Transfers to those persons in subdivision (a) of
14 section two, seven per cent; transfers to those persons in sub-
15 division (b) of section two, eight per cent; transfers to those
16 persons in subdivision (c) of section two, eleven per cent; trans-
17 fers to those persons in subdivision (d) of section two, fourteen
18 per cent; (c) Upon all in excess of three hundred thousand
19 dollars, up to and not exceeding five hundred thousand dollars,
20 the rate shall be as follows: Transfers to those persons in sub-
21 division (a) of section two, nine per cent; transfers to those
22 persons in subdivision (b) of section two, ten per cent; trans-
23 fers to those persons in subdivision (c) of section two, fifteen
24 per cent; transfers to those persons in subdivision (d) of sec-
25 tion two, eighteen per cent; (d) Upon all in excess of five hun-
26 dred thousand dollars, up to and not exceeding one million
27 dollars, the rate shall be as follows: Transfers to those persons
28 in subdivision (a) of section two, eleven per cent; transfers
29 to those persons in subdivision (b) of section two, fourteen per
30 cent; transfers to those persons in subdivision (c) of section
31 two, twenty per cent; transfers to those persons in subdivision
32 (d) of section two, twenty-four per cent; (e) Upon all in
33 excess of one million dollars the rates shall be as follows:
34 Transfers to those persons in subdivision (a) of section two,
35 thirteen per cent; transfers to those persons in subdivision (b)
36 of section two, eighteen per cent; transfers to those persons in
37 subdivision (c) of section two, twenty-five per cent; transfers
38 to those persons in subdivision (d) of section two, thirty per
39 cent.

Sec. 4. (a) All property transferred to the state or to any
2 county, school district, or municipal corporation thereof for
3 public purposes shall be exempt from taxation under this article.
4 (b) No transfer of less than one hundred dollars shall be
5 taxable under this article. For this purpose all transfers from
6 a decedent to the same transferee shall be treated as a unit.
7 (c) Property transferred to a widow of a deceased person
8 shall be allowed exemptions from taxes under this article as
9 follows: (1) Transfers not in excess of fifteen thousand dol-
10 lars shall be entirely exempt; (2) Transfers in excess of fifteen
11 thousand dollars up to and not exceeding twenty-five thousand
12 dollars shall have an exemption determined by subtracting from
13 fifteen thousand dollars, the difference between fifteen thousand
14 dollars and the amount of the transfer; (3) There shall be no
15 exemption in the case of a transfer in excess of twenty-five
16 thousand dollars.
17 (d) Property transferred to any person within the classes
18 described in subdivision (a) of section two other than a wife
19 shall be allowed exemption from taxes under this article as
20 follows: (1) Transfers not in excess of five thousand dollars
21 shall be entirely exempt; (2) Transfers in excess of five thou-
22 sand dollars up to and not exceeding ten thousand dollars shall
23 have an exemption determined by subtracting from five thou-
24 sand dollars, the difference between five thousand dollars and
25 the amount of the transfer; (3) Transfers in excess of ten
26 thousand dollars shall be allowed no exemption.
27 The descendants of any child referred to in subdivision (a)
28 of section two shall be allowed the exemption of the person they
29 represent per stirpes and not per capita.

Sec. 5. The market value of property is its actual market
2 value after deducting debts and encumbrances for which the
3 same is liable, and to the payment of which it shall actually
4 be subjected. In fixing such market value, allowances shall not
5 be made for debts incurred by the decedent, or encumbrances
6 made by him, unless such debts or encumbrances were incurred
7 or created in good faith for an adequate consideration, nor for
8 any debt in respect whereof there is a right to reimbursement
9 from any other estate or person, unless such reimbursement
10 from any other estate or person cannot be obtained.
11 For the purpose of the tax there shall be deducted from the
12 market value of the property transferred the value at which
13 it was assessed for any inheritance or transfer tax paid to the
14 state of West Virginia upon a transfer to the decedent at any
time within three years prior to the death of the decedent. This paragraph shall apply only to transferees designated in sub-
sections (a) and (b) of section two of this article.

Sec. 11. All taxes imposed by this article shall be due and payable at the death of the transferor and if paid within six months after the death of the transferor a discount of three per cent shall be allowed and deducted. If not paid within twelve months after the death of the transferor taxes due under this article shall bear interest at the rate of ten per centum per annum, to be computed from the expiration of twelve months from the date of the death of the transferor until paid, and a penalty of five per cent shall be added. The tax commis-
sioner may suspend payment of such taxes, penalties and inter-
est if there be necessary litigation pending at the time such taxes are due and payable, which involves the estate, or for other good and sufficient cause. Suits and actions brought for the purpose of defeating the payment of any such taxes, pen-
alties and interest, shall not be deemed necessary litigation within the meaning of this section.

Sec. 13. The county courts of all counties of the state, or the clerks thereof, shall make reports in all decedent estates and in
all cases where a transfer otherwise occurs when required by
the tax commissioner. Such clerks may ascertain when a trans-
fer has occurred by reference to the filing of a will, the ap-
pointment of a fiduciary, or the admission to record of a deed
or other writing intended to take effect in possession or enjoy-
ment, at or after the death of the maker thereof, or appearing
to be in contemplation of his death, or be based on any infor-
mation otherwise derived, and shall report the same to the tax
commissioner. Such a report shall be made quarterly as soon
as possible after the first day of January, April, July and
October in each year, and shall relate to all such matters as
were not covered by any previous report. A special report may
be made by the clerk at any time. If there be no reason to
believe that any such transfer has been made since the date of
the last preceding report, that fact shall be stated in such
quarterly report, but if there be reason to believe that such a
transfer has been made, such quarterly or special report shall
show the nature thereof; the name of the decedent, devisor,
grantor, vendor, bargainor or donor the name or other descrip-
tion, and the address, of the person or corporation to or for
whose use or benefit any property may be transferred, and the
24 relationship, if any, between such person and the person from
25 whom the property is transferred, as far as the court or clerk
26 may have any information respecting such matters; the nature
27 of the property transferred, with such general description and
28 approximate valuation as the court or clerk may be able to
give. Any other person, whether interested in such property
30 or not, may make a like report to the tax commissioner. Every
31 such report, whether by the clerk or by any other person, shall
32 be filed by the tax commissioner, and retained in his office until
33 the tax be paid on the transfers therein mentioned, or until it
34 shall be ascertained that they are not subject to tax, and shall
35 then be destroyed; and at all times such report shall be confidential and privileged, and its contents shall not be inspected
36 or made known by any one, except by the tax commissioner as
37 to any report made by a clerk, when there shall be a question
38 whether such clerk has complied with the provisions of this
39 article.
40 The tax commissioner shall have full authority of enforce-
41 ment and collection of all taxes due under this act and shall
42 make such rules and regulations, from time to time, as may be
necessary for the interpretation and enforcement thereof, the
the forms to be used and the reports to be filed hereunder.

Sec. 14-a. No corporation incorporated under the law of
this state, and no registration or transfer agent thereof, shall
register or transfer any bonds or stock of the corporation stand-
ing in the name of a decedent or joint names of a decedent and
one or more persons or in trust for a decedent until ten days
notice to the tax commissioner of the time of the transfer and
until the tax commissioner shall consent thereto in writing. A
corporation or agent registering bonds or making a transfer
without the consent of the tax commissioner under this section
shall be liable for any tax thereafter assessed on account of
the transfer of such securities together with accrued interest
and a penalty of one thousand dollars. This liability may be
enforced in the manner provided in section twenty of this
article.

If a corporation not incorporated in this state and owning
property in the state, or the registration or transfer agent there-
of, shall register or transfer on its books bonds or stock of the
corporation standing in the name of a resident decedent before
taxes accruing under this article with respect to the transfer
20 of such bonds or stock on the death of the decedent have been
21 paid, such corporation or agent shall become liable for the pay-
22 ment of such taxes. Property held by such a corporation or
23 agent in this state shall be subject to execution to satisfy any
24 liability of the corporation or agent under this section. A
25 receipt or certificate of authority signed by the tax commis-
26 sioner shall be full protection to either a domestic or a foreign
27 corporation or agent thereof in the transfer of any such bonds
28 or stock.
29 The tax commissioner shall have authority to require that
30 any reports necessary to a proper enforcement of this article
31 be made by any corporation subject to the provisions of this
32 section.

Sec. 20. If any such taxes, hereinbefore provided for, shall
2 not be paid within sixty days from the time they become pay-
3 able, or if there be an appeal with respect to the same or pay-
4 ment thereof be prevented by litigation or other unavoidable
5 cause, within sixty days after the decision of such appeal or
6 the end of such litigation or other cause of delay, the tax
7 commissioner shall, on behalf of the state, and with the assist-
8 ance of the prosecuting attorney of the county, proceed in the
9 circuit court, by bill in chancery to enforce the lien of such
taxes upon any real property subject to such lien, and to ob-
tain the sale thereof, or of so much thereof as may be necessary
to satisfy such lien, and by other appropriate proceedings to
enforce the lien of such taxes upon any other property subject
to such lien, and relief shall be given by such circuit court
accordingly. In addition to any other remedy for the collec-
tion of any tax upon such transfer, the same may be recovered
in an action of assumpsit on behalf of the state of West Vir-
ginia against any person liable for such tax, and the tax com-
missioner is authorized to bring such action in any circuit court
or before any justice having jurisdiction, and the prosecuting
attorney shall conduct the prosecution thereof. The prosecuting
attorney shall receive no compensation for this service in addi-
tion to his regular salary. There shall be assessed a statutory
fee of not less than fifteen or more than fifty dollars in every
law suit instituted for the collection of such taxes, and of not
less than twenty-five nor more than one hundred dollars in
each chancery suit instituted for this purpose, such fees in
each case to be fixed by the circuit court, which said amounts
shall be collected and paid into the treasury of the state in like
manner as such inheritance tax. The tax commissioner may
compromise and settle the amounts of any such tax when there
is a controversy as to the relationship between the former owner
of the property and the person to whom it is transferred.

Sec. 28. It is the purpose of this section to impose an estate
tax and to take full advantage of the credit allowed by laws of
the United States because of transfer or death taxes actually
paid to this state. There is, therefore, imposed hereby a tax in
addition to any inheritance tax under the laws of this state
upon the net estate of every decedent, whether resident or non-
resident, dying after the enactment of this act. In the case
of non-residents, the tax shall be on only so much of the net
estates as represents property or funds having a taxable situs
in this state.

The amount of the tax shall be computed by determining the
full amount of the federal tax due upon a transfer in accordance
with laws of congress in force at the time of the death of the
decedent, and by calculating that percentage of the federal tax
allowed as credit because of the payment of this tax to the state.
The rules and regulations for determining the amount of the
net estate upon the transfer of which the tax is imposed, shall
be the same as the rules and regulations adopted by the commissioner of internal revenue for determining the net estate under laws of congress.

The administrative provisions of this article relating to the collection of the state inheritance tax shall apply, so far as applicable, to the collection of the tax imposed by this section.
Enrolled H. B. No. 115]

Speaker of the House of Delegates.

Clerk of the House of Delegates.

President of the Senate.

Clerk of the Senate.

The within is approved.

this 7th day of June 1933.

Governor.

Filed in the office of the Secretary of State
of West Virginia, Wm. S. O'D. R.M.
Secretary of State.