

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1965

ENROLLED

SENATE BILL NO. 78

(By Mr. Davis.....)

PASSED February 17.....1965

In Effect from.....Passage



FILED IN THE OFFICE OF
JOE F. BURDETT
SECRETARY OF STATE
THIS DATE 2-24-65

868

ENROLLED
Senate Bill No. 78

(By MR. DAVIS)

[Passed February 17, 1965; in effect from passage.]

AN ACT to amend and reenact section one, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the imposition of inheritance and transfer taxes.

Be it enacted by the Legislature of West Virginia:

That section one, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1. When Imposed.—A tax, payable into the
2 treasury of the state, shall be imposed upon the transfer,
3 in trust, or otherwise, of any property, or interest therein,
4 real, personal, or mixed, if such transfer be: (a) By will

5 or by laws of this state regulating descent and distribu-
6 tion from any person who is a resident of the state at
7 the time of his death and who shall die seized or possessed
8 of property; (b) by will or by laws regulating descent
9 and distribution of property within the state, or within
10 its taxing jurisdiction, and the decedent was a nonresi-
11 dent of the state at the time of his death; (c) by a resident,
12 or by a nonresident owning taxable property within
13 the state or within its jurisdiction, by deed, grant, sale
14 or gifts, made in contemplation of the death of the
15 grantor, vendor, or donor, or intended to take effect in
16 possession or enjoyment at or after such death, or where
17 any change in the use or enjoyment of property included
18 in such transfer, or the income thereof, may occur in the
19 lifetime of the grantor, vendor, or donor, by reason of
20 any power reserved to, or conferred upon, the grantor,
21 vendor, or donor, either solely or in conjunction with
22 any person, or persons, to alter, or to amend, or to revoke
23 any transfer, or any portion thereof, as to the portion
24 remaining at the time of death of the grantor, vendor, or
25 donor, thus subject to alteration, amendment or revoca-

tion. If any one of the transfers mentioned in this subdivision is made for valuable consideration, the portion of the transfer for which the grantor, or vendor receives equivalent monetary value is not taxable, but the remaining portion thereof is taxable. Every transfer by deed, grant, sale or gift, made within three years prior to the death of the grantor, vendor, or donor, without adequate valuable consideration, shall be presumed to have been made in contemplation of death within the meaning of this subdivision; (d) by any person who 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, with the right of survivorship, in whole or in part, 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 in the survivor: *Provided, however,* That this subsection shall not apply to bank accounts and to shares or savings accounts in federal savings and loan associations organized under the federal home owners' loan act of one thousand nine hundred

47 thirty-three, as amended, or in building and loan asso-
48 ciations organized under article six, chapter thirty-one
49 of this code, payable to the class designated in section two
50 (a) in a total amount of twenty-five hundred dollars or
51 less: *Provided further*, That in the case of a surviving
52 spouse, not more than fifty per centum of the value of any
53 transfer mentioned in this subsection (d) shall be included
54 and taxed in any such decedent's estate; (e) to any person
55 deriving an estate in property, coupled with a power of
56 appointment, in which event such estate shall be taxed
57 as other limited estates; and whenever any person shall
58 exercise a power of appointment derived from any dis-
59 position of property made, which appointment when made
60 shall be deemed a transfer taxable under the provisions of
61 this article, in the same manner as though the property to
62 which such appointment relates belonged absolutely to
63 the donee of such power and had been bequeathed or de-
64 vised by such donee by will; and whenever any person
65 possessing such a power of appointment so derived shall
66 omit or fail to exercise the same within the time provided
67 therefor in whole or in part, a transfer taxable under the

68 provisions of this article shall be deemed to take place to
69 the extent of such omission or failure, in the same manner
70 as though the person thereby becoming entitled to the
71 possession or enjoyment of the property to which such
72 power related had succeeded thereto by a will of the
73 donee of the power failing to exercise such power, and
74 shall take effect at the time of such omission or failure:
75 *Provided further*, That in either of which events the tax
76 commissioner, on the application of any person in interest
77 or upon his own motion, may, after due notice to the
78 known persons interested, apportion such taxes, first, as
79 to the interest of the donee of the power of appointment,
80 and second, to the remainder or reversionary interests of
81 others at the highest probable rate applicable thereto,
82 and shall make his certificate accordingly, which shall
83 be forwarded and disposed of in the same manner as other
84 certificates herein provided for. The portion of any such
85 taxes apportioned as to the remainder or reversionary
86 interest shall be paid out of the corpus of the estate in
87 like manner as other assessments as if such interest had
88 vested in possession; and, upon such assessment and pay-

89 ment of the tax the matter shall become a finality; (f) by
90 the terms of any annuity or investment contracts, or
91 similar type or form of contract or policy, and shall be
92 on the amount payable under any such contract or policy,
93 on account of a death, to named beneficiaries, to his estate
94 or in trust for the benefit of any individual or individ-
95 uals, including (1) all such policies or contracts hereafter
96 issued, and (2) all such policies or contracts now in force:
97 *Provided, however,* That there shall be exempt from the
98 provisions of this subsection the proceeds of such con-
99 tracts or policies: (a) When the premiums on such
100 policies or contracts were paid by the beneficiary named
101 in such policy or contract, to the extent only of the ratio
102 of premiums paid by the beneficiary bear to the total
103 premiums paid; (b) when the proceeds of such policies
104 or contracts have been assigned by the decedent for a
105 valuable consideration either in form absolute or as col-
106 lateral security for the payment of a bona fide indebted-
107 ness of the decedent, to the extent that the proceeds
108 thereof shall be necessary to pay and satisfy such indebt-
109 edness. It is provided, however, that no annuity settle-

110 ment or arrangement accepted in lieu of cash settlement
111 of a life insurance policy, whereby the proceeds of such
112 policy are payable in installments, shall be subject to
113 taxation under the provisions of this article, nor shall
114 the provisions of this article apply to the proceeds of
115 any policy of life or accident insurance payable to a
116 named beneficiary or beneficiaries whether directly or
117 in trust or otherwise.

118 Where annuity or investment contracts or policies are
119 left by a decedent in such manner that the proceeds
120 thereof cannot be subjected to the payment of his debts,
121 and where the proceeds of such annuity or investment
122 contracts are received by beneficiaries thereof, the fact
123 that the decedent may have been insolvent and that a
124 portion of his debts may remain unpaid shall not affect
125 the liability for inheritance tax on such proceeds.

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

O. Roy Parker
Chairman Senate Committee

James W. Larp
Chairman House Committee

Originated in the Senate.

Takes effect *from* Passage.

James H. Keene
Clerk of the Senate

A. Blankenship
Clerk of the House of Delegates

Howard E. Cannon
President of the Senate

H. Laban White
Speaker House of Delegates

The within *approved* this the *24th*
day of *February*, 1965.

Heena C. Smith
Governor



Presented to Gov's. Office

Feb. 19, 1965

11:05 am