WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1976

ENROLLED

HOUSE BILL No. 1049

(By Mr. Speaker, Mr. Benjamin, Mr. Skow)

PASSED March 11, 1976

In Effect July 1, 1976

Filed in the Office
JAMES R. MCCARTNEY
SECRETARY OF STATE
THIS DATE 3/23/76
ENROLLED

H. B. 1044

(By Mr. Speaker, Mr. McManus, and Mrs. Given)

[Passed March 11, 1976; in effect July 1, 1976.]

AN ACT to amend and reenact sections one, four and eleven, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article eleven by adding thereto a new section, designated section twenty-eight, all relating to inheritance and transfer taxes; providing for taxation of a transfer of an estate in property coupled with a general or limited power of appointment; providing for taxation of a transfer by the exercise or nonexercise of a general power of appointment; providing for exemption of annuity or other payments receivable by beneficiaries from decedents under pension and similar type plans, contracts or policies; providing for increasing the amount of exemptions from tax of property transferred to certain specified transferees; providing for accelerating payment and collection of tax; imposing an additional tax on the transfer of property of resident decedents to equal the maximum allowable federal estate tax credit available to an estate under the estate tax imposed by the revenue laws of the United States; and specifying certain effective dates.

Be it enacted by the Legislature of West Virginia:

That sections one, four and eleven, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article eleven be further amended by adding thereto a new section, designated section twenty-eight, all to read as follows:
ARTICLE 11. INHERITANCE AND TRANSFER TAXES.

§11-11-1. When imposed.

A tax, payable into the treasury of the state, shall be imposed upon the transfer, in trust, or otherwise, of any 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.

(c) By a resident, or by a nonresident owning taxable property within the state or within its jurisdiction, by deed, grant, sale or gifts, made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after such death, or where any change in the use or enjoyment of property included in such transfer, or the income thereof, may occur in the lifetime of the grantor, vendor, or donor, by reason of any power reserved to, or conferred upon, the grantor, vendor, or donor, either solely or in conjunction with any person, or persons, to alter, or to amend, or to revoke any transfer, or any portion thereof, as to the portion remaining at the time of death of the grantor, vendor, or donor, thus subject to alteration, amendment or revocation. 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 the 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, That this sub-
division shall not apply to bank accounts and to shares or
savings accounts in federal savings and loan associations or-
organized under the federal home owners' loan act of one thou-
sand nine hundred thirty-three, as amended, or in building and
loan associations organized under article six, chapter thirty-one
of this code, payable to the class designated in section two(a)
in a total amount of twenty-five hundred dollars or less: Pro-
vided, however, That in the case of a surviving spouse, not more
than fifty per centum of the value of any transfer mentioned in
this subdivision (d) shall be included and taxed in any such
decedent's estate.

(e) To any person deriving an estate in property coupled
with a general or limited power of appointment.

(1) General power.—Any transfer involving the creation
of a general power of appointment shall be treated as trans-
ferring to the donee of the power a fee or equivalent interest
in the property which is subject to the power.

(2) Limited power.—Any transfer involving the creation
of any other power of appointment shall be treated as trans-
ferring to the donee of the power a life estate or term of years in
the property which is subject to the power and as transferring
remainder or reversionary interests therein to those who
would take if the power is not exercised. The portion of tax
which is imposed on any person entitled in remainder or
reversion shall be payable in the same manner, and within the
same time, as if such person's interest had vested in pos-
session. Unless otherwise provided by the decedent, the
tax on such temporary interests and on such remainder
or reversionary interests shall be payable out of the corpus
of the property which is subject to the power.

(f) By the exercise or nonexercise of a general power of
appointment.

(1) Power that remains unexercised at time of death.—
If at the time of his death a decedent has a general power of
appointment with respect to property, the exercise of that power
is subject to tax as a transfer of the property from the decedent
to the person to whom the property is appointed. The failure of
the decedent to exercise a general power of appointment is
subject to tax as a transfer of the property from the decedent
to the person to whom the property passes by virtue of the non-
exercise of the power. For purposes of this paragraph the
power of appointment shall be considered to exist on the date
of the decedent's death even though the exercise of that power
is subject to a precedent giving of notice or even though the
exercise of the power takes effect only on the expiration of a
stated period after its exercisen, whether or not on or before the
date of the decedent's death, notice has been given or the power
has been exercised.

(2) Exercise or release by decedent of power during his
lifetime.—The exercise or release by the decedent during his
lifetime of a general power of appointment is a transfer subject
tax if the exercise or release is of such a nature that if it were
a transfer of property owned by the decedent, such transfer
would be subject to tax under this article. A disclaimer or
renunciation of such a power of appointment shall not be
deemed a release of such power.

(3) Definition.—For purposes of subdivisions (e) and
(f), the term “general power of appointment” and the term
“lapse of power” shall have the same meaning as when used in
section 2041 of the Internal Revenue Code.

(g) By the terms of any annuity or investment contracts,
or similar type or form of contract or policy, and shall be on
the amount payable under any such contract or policy, on
account of a death, to named beneficiaries, to his estate or in
trust for the benefit of any individual or individuals, in-
cluding (1) all such policies or contracts hereafter issued,
and (2) all such policies or contracts now in force: Pro-
vided, That there shall be exempt from the provisions of this
subdivision the proceeds of such contracts or policies:

(a) When the premiums on such policies or contracts were
paid by the beneficiary named in such policy or contract, to
the extent only of the ratio of premiums paid by the bene-
iciary bear to the total premiums paid;
(b) When the proceeds of such policies or contracts have been assigned by the decedent for a valuable consideration either in form absolute or as collateral security for the payment of a bona fide indebtedness of the decedent, to the extent that the proceeds thereof shall be necessary to pay and satisfy such indebtedness: Provided, however, That no annuity settlement or arrangement accepted in lieu of cash settlement of a life insurance policy, whereby the proceeds of such policy are payable in installments, shall be subject to taxation under the provisions of this article, nor shall the provisions of this article apply to the proceeds of any policy of life or accident insurance payable to a named beneficiary or beneficiaries whether directly or in trust or otherwise.

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

Notwithstanding anything contained herein to the contrary, there shall be exempt from tax hereunder the proceeds of an annuity or other payment, whether attributable to employer contribution, employee contribution or otherwise, receivable by any beneficiary under:

(1) An employees' trust (or under a contract purchased by an employees' trust) forming part of a pension, stock bonus, or profit-sharing plan, including self-employed plans, which, at the time of the decedent's separation from employment (whether by death or otherwise), or at the time of termination of the plan if earlier, met the requirements of section 401(a) of the Internal Revenue Code;

(2) A retirement annuity contract purchased by an employer (and not by an employees' trust) pursuant to a plan which, at the time of decedent's separation from employment (by death or otherwise), or at the time of termination of the
plan if earlier, was a plan described in section 403(a) of the Internal Revenue Code;

(3) A retirement annuity contract purchased for an employee by an employer which is an organization referred to in section 170(b)(1)(A)(ii) or (vi) of the Internal Revenue Code, or which is a religious organization (other than a trust), and which is exempt from tax under section 501(a) of the Internal Revenue Code;

(4) Annuity under the Retired Serviceman's Family Protection Plan or Survivor Benefit Plan pursuant to chapter 73 of Title 10 of the United States Code;

(5) A retirement savings plan for which a deduction has been allowed under section 219 of the Internal Revenue Code.

All references to the Internal Revenue Code shall be to the Internal Revenue Code of 1954, as amended, as in effect on the first day of January, one thousand nine hundred seventy-six. All references to the United States Code shall be to the United States Code in effect on the first day of January, one thousand nine hundred seventy-six.

§11-11-4. Exemptions.

(a) All property transferred to the state or to any county, school district, or municipal corporation thereof, for public purposes, shall be exempt from taxation under this article.

(b) No transfer of two hundred dollars, or less, shall be taxable under this article. For this purpose, all transfers from a decedent to the same transferee shall be treated as a unit.

(c) In computing the tax upon property transferred to a widow, or a widower of a deceased person, an exemption of thirty thousand dollars shall be allowed.

(d) In computing the tax upon property transferred to the father, mother, child or stepchild of the decedent, there shall be allowed an exemption of ten thousand dollars; from property transferred to a grandchild of the decedent there shall be allowed an exemption of five thousand dollars.

(e) In computing the tax upon property transferred to the brother, sister, half brother or half sister of the decedent, if
at the time of death the decedent was unmarried, there shall be allowed an exemption of ten thousand dollars.

(f) There shall be exempt from taxation under this article, all property transferred to a person or corporation, foreign or domestic, in trust or for the use solely for educational, literary, scientific, religious or charitable purposes: Provided, That the property so transferred to the person resident of another state or to foreign corporation, in trust or for the purposes here­in mentioned, shall be exempt only so far as the laws of the state where such person or foreign corporation is domiciled would exempt like property transferred from that state to a person or corporation in this state in trust and for similar purposes.

The provisions of this subsection as hereby amended shall apply to all future devises, bequests and gifts for such purposes, and shall be retroactive in applying to all past devises, bequests and gifts for such purposes, where the final payment of transfer or inheritance taxes has not been made to the state of West Virginia.


All taxes imposed by this article shall be due and payable at the death of the transferor and if paid within ten months after the death of the transferor a discount of three percent shall be allowed and deducted. If not paid within eleven 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 eleven months from the date of the death of the transferor until paid, and a penalty of five percent shall be added. The tax commissioner may suspend payment of such taxes, penalties and interest 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, penalties and interest, shall not be deemed necessary litigation within the meaning of this section.

The provisions of this section as hereby amended shall apply to the estates of all decedents dying on or after the first
day of July, one thousand nine hundred seventy-six and the provisions of this section eleven, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, in effect prior to the enactment hereof shall apply to the estates of all decedents dying before said date.


(a) Imposition of Tax.—A tax in addition to that imposed by section one of this article is hereby imposed upon the transfer of property of every person who, after the effective date of this section, shall die a resident of this state, the amount of which shall be a sum equal to the excess (if any) of—

(1) The maximum amount of the credit, allowable under the applicable revenue laws of the United States imposing an estate tax, for estate, inheritance, legacy and succession taxes paid to the several states of the United States, over

(2) The total amount of all constitutionally valid estate, inheritance, legacy and succession taxes actually paid to the several states of the United States (other than this state) and paid to this state under section one of this article. The purpose of this section is to secure for the state of West Virginia the maximum benefit in all cases of the credit allowed under the provisions of the estate tax imposed by the revenue laws of the United States, to the extent that this state may be entitled thereto, and this section shall be liberally construed to effect such purpose.

(b) Apportionment of tax.—The tax imposed by this section shall be apportioned and paid in the same manner as the federal estate tax is apportioned and paid pursuant to the provisions of section sixteen-a of article two, chapter forty-four of the code of West Virginia of one thousand nine hundred thirty-one, as amended. The provisions of said section sixteen-a shall in all respects apply to the apportionment and payment of the tax imposed by this section, and those persons paying the tax imposed by this section shall have all the rights in respect to the tax imposed by this section which are accorded by
said section sixteen-a to those persons paying the federal
estate tax. Said section sixteen-a shall be construed in all
respects to apply as fully to the tax imposed by this section
as if said sixteen-a specifically referred to and included the
tax imposed by this section.

(c) Administration.—The tax imposed by this section
shall be paid in full by the personal representative, regard-
less of whether or not the property transferred is subject
to his control. In no event, however, shall the personal
liability of the personal representative exceed the assets
of the estate coming within his control. If there is no
personal representative appointed, qualified and acting with-in
the state, then any person in actual or constructive pos-
session of any property includable in the gross estate of
the decedent shall be liable for the tax imposed by this
section to the extent of the value of such property at the
date of the decedent’s death. The term “gross estate” as
used herein shall include all property subject to the estate
tax imposed under the revenue laws of the United States.

(d) Effective date.—The provisions of this section shall
apply to the transfer of the estate of every decedent who shall
die a resident of this state on or after the first day of July, one
thousand nine hundred seventy-six.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.
Takes effect July 1, 1976.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 19th day of March, 1976.

Governor
PRESENTED TO THE GOVERNOR

Date 3/15/76
Time 2:00 p.m.