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OFFICE OF THE  
SECRETARY OF STATE  
MARTINSBURG, WEST VIRGINIA

**WEST VIRGINIA LEGISLATURE**  
**REGULAR SESSION, 1976**



**ENROLLED**

**HOUSE BILL No. 1044**

(By Mr. Speaker, Mr. McManus & Mr. Givon)



PASSED March 11, \_\_\_\_\_ 1976

In Effect July 1, 1976 \_\_\_\_\_ Passage



FILED IN THE OFFICE  
JAMES R. MCCARTNEY  
SECRETARY OF STATE

THIS DATE 3/23/76

1044

**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.**

1 A tax, payable into the treasury of the state, shall be  
2 imposed upon the transfer, in trust, or otherwise, of any  
3 property, or interest therein, real, personal, or mixed, if  
4 such transfer be:

5 (a) By will or by laws of this state regulating descent and  
6 distribution from any person who is a resident of the state at the  
7 time of his death and who shall die seized or possessed of  
8 property.

9 (b) By will or by laws regulating descent and distribution of  
10 property within the state, or within its taxing jurisdiction, and  
11 the decedent was a nonresident of the state at the time of his  
12 death.

13 (c) By a resident, or by a nonresident owning taxable  
14 property within the state or within its jurisdiction, by deed,  
15 grant, sale or gifts, made in contemplation of the death of the  
16 grantor, vendor, or donor, or intended to take effect in posses-  
17 sion or enjoyment at or after such death, or where any change  
18 in the use or enjoyment of property included in such transfer,  
19 or the income thereof, may occur in the lifetime of the grantor,  
20 vendor, or donor, by reason of any power reserved to, or con-  
21 ferred upon, the grantor, vendor, or donor, either solely or in  
22 conjunction with any person, or persons, to alter, or to amend,  
23 or to revoke any transfer, or any portion thereof, as to  
24 the portion remaining at the time of death of the grantor,  
25 vendor, or donor, thus subject to alteration, amendment  
26 or revocation. If any one of the transfers mentioned in  
27 this subdivision is made for valuable consideration, the portion  
28 of the transfer for which the grantor, or vendor receives equi-  
29 valent monetary value is not taxable, but the remaining portion  
30 thereof is taxable. Every transfer by deed, grant, sale or gift,  
31 made within three years prior to the death of the grantor, ven-  
32 dor, or donor, without adequate valuable consideration, shall be  
33 presumed to have been made in the contemplation of death  
34 within the meaning of this subdivision.

35 (d) By any person who shall transfer any property which  
36 he owns, or shall cause any property to which he is absolutely

37 entitled to be transferred to or vested in himself and any other  
 38 person jointly, with the right of survivorship, in whole or in  
 39 part, in such other person, a transfer shall be deemed to occur  
 40 and to be taxable under the provisions of this article upon the  
 41 vesting of such title in the survivor: *Provided*, That this sub-  
 42 division shall not apply to bank accounts and to shares or  
 43 savings accounts in federal savings and loan associations or-  
 44 ganized under the federal home owners' loan act of one thou-  
 45 sand nine hundred thirty-three, as amended, or in building and  
 46 loan associations organized under article six, chapter thirty-one  
 47 of this code, payable to the class designated in section two(a)  
 48 in a total amount of twenty-five hundred dollars or less: *Pro-*  
 49 *vided, however*, That in the case of a surviving spouse, not more  
 50 than fifty per centum of the value of any transfer mentioned in  
 51 this subdivision (d) shall be included and taxed in any such  
 52 decedent's estate.

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

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

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

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

74 (1) *Power that remains unexercised at time of death.*—  
 75 If at the time of his death a decedent has a general power of

76 appointment with respect to property, the exercise of that power  
77 is subject to tax as a transfer of the property from the decedent  
78 to the person to whom the property is appointed. The failure of  
79 the decedent to exercise a general power of appointment is  
80 subject to tax as a transfer of the property from the decedent  
81 to the person to whom the property passes by virtue of the non-  
82 exercise of the power. For purposes of this paragraph the  
83 power of appointment shall be considered to exist on the date  
84 of the decedent's death even though the exercise of that power  
85 is subject to a precedent giving of notice or even though the  
86 exercise of the power takes effect only on the expiration of a  
87 stated period after its exercise, whether or not on or before the  
88 date of the decedent's death, notice has been given or the power  
89 has been exercised.

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

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

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

111 (a) When the premiums on such policies or contracts were  
112 paid by the beneficiary named in such policy or contract, to  
113 the extent only of the ratio of premiums paid by the bene-  
114 ficiary bear to the total premiums paid;

115 (b) When the proceeds of such policies or contracts  
116 have been assigned by the decedent for a valuable consideration  
117 either in form absolute or as collateral security for the  
118 payment of a bona fide indebtedness of the decedent, to the  
119 extent that the proceeds thereof shall be necessary to pay  
120 and satisfy such indebtedness: *Provided, however,* That no  
121 annuity settlement or arrangement accepted in lieu of cash  
122 settlement of a life insurance policy, whereby the proceeds  
123 of such policy are payable in installments, shall be subject  
124 to taxation under the provisions of this article, nor shall  
125 the provisions of this article apply to the proceeds of any  
126 policy of life or accident insurance payable to a named bene-  
127 ficiary or beneficiaries whether directly or in trust or other-  
128 wise.

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

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

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

149 (2) A retirement annuity contract purchased by an em-  
150 ployer (and not by an employees' trust) pursuant to a plan  
151 which, at the time of decedent's separation from employment  
152 (by death or otherwise), or at the time of termination of the

153 plan if earlier, was a plan described in section 403(a) of the  
154 Internal Revenue Code;

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

161 (4) Annuity under the Retired Serviceman's Family Pro-  
162 tection Plan or Survivor Benefit Plan pursuant to chapter 73  
163 of Title 10 of the United States Code;

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

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

#### **§11-11-4. Exemptions.**

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

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

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

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

15 (e) In computing the tax upon property transferred to the  
16 brother, sister, half brother or half sister of the decedent, if

17 at the time of death the decedent was unmarried, there shall  
18 be allowed an exemption of ten thousand dollars.

19 (f) There shall be exempt from taxation under this article,  
20 all property transferred to a person or corporation, foreign or  
21 domestic, in trust or for the use solely for educational, literary,  
22 scientific, religious or charitable purposes: *Provided*, That the  
23 property so transferred to the person resident of another  
24 state or to foreign corporation, in trust or for the purposes here-  
25 in mentioned, shall be exempt only so far as the laws of the  
26 state where such person or foreign corporation is domiciled  
27 would exempt like property transferred from that state to  
28 a person or corporation in this state in trust and for similar  
29 purposes.

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

**§11-11-11. Payments and collection.**

1 All taxes imposed by this article shall be due and payable at  
2 the death of the transferor and if paid within ten months after  
3 the death of the transferor a discount of three percent shall  
4 be allowed and deducted. If not paid within eleven months  
5 after the death of the transferor taxes due under this article  
6 shall bear interest at the rate of ten per centum per annum, to  
7 be computed from the expiration of eleven months from the  
8 date of the death of the transferor until paid, and a penalty of  
9 five percent shall be added. The tax commissioner may suspend  
10 payment of such taxes, penalties and interest if there be neces-  
11 sary litigation pending at the time such taxes are due and pay-  
12 able, which involves the estate, or for other good and suffi-  
13 cient cause. Suits and actions brought for the purpose of de-  
14 feating the payment of any such taxes, penalties and interest,  
15 shall not be deemed necessary litigation within the meaning of  
16 this section.

17 The provisions of this section as hereby amended shall ap-  
18 ply to the estates of all decedents dying on or after the first

19 day of July, one thousand nine hundred seventy-six and the  
20 provisions of this section eleven, article eleven, chapter eleven  
21 of the code of West Virginia, one thousand nine hundred  
22 thirty-one, as amended, in effect prior to the enactment here-  
23 of shall apply to the estates of all decedents dying before said  
24 date.

**§11-11-28. Additional tax imposed.**

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

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

11 (2) The total amount of all constitutionally valid estate,  
12 inheritance, legacy and succession taxes actually paid to the  
13 several states of the United States (other than this state)  
14 and paid to this state under section one of this article. The  
15 purpose of this section is to secure for the state of West Vir-  
16 ginia the maximum benefit in all cases of the credit allowed  
17 under the provisions of the estate tax imposed by the revenue  
18 laws of the United States, to the extent that this state may  
19 be entitled thereto, and this section shall be liberally con-  
20 strued to effect such purpose.

21 (b) *Apportionment of tax.*—The tax imposed by this  
22 section shall be apportioned and paid in the same manner  
23 as the federal estate tax is apportioned and paid pur-  
24 suant to the provisions of section sixteen-a of article two,  
25 chapter forty-four of the code of West Virginia of one  
26 thousand nine hundred thirty-one, as amended. The pro-  
27 visions of said section sixteen-a shall in all respects apply  
28 to the apportionment and payment of the tax imposed  
29 by this section, and those persons paying the tax im-  
30 posed by this section shall have all the rights in respect  
31 to the tax imposed by this section which are accorded by

32 said section sixteen-a to those persons paying the federal  
33 estate tax. Said section sixteen-a shall be construed in all  
34 respects to apply as fully to the tax imposed by this section  
35 as if said sixteen-a specifically referred to and included the  
36 tax imposed by this section.

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

51 (d) *Effective date.*—The provisions of this section shall  
52 apply to the transfer of the estate of every decedent who shall  
53 die a resident of this state on or after the first day of July, one  
54 thousand nine hundred seventy-six.

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

*James L. Davis*  
Chairman Senate Committee

*Clarence C. Thurston*  
Chairman House Committee

Originated in the House.

Takes effect July 1, 1976.

*J. C. Willson, Jr.*  
Clerk of the Senate

*L. A. Blankenship*  
Clerk of the House of Delegates

*W. T. Battle, Jr.*  
President of the Senate

*Lewis F. McNamee*  
Speaker House of Delegates

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

*Arch A. Shaver, Jr.*  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3/15/76

Time 2:00 p.m.