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APPROVED AND SIGNED BY THE GOVERNOR

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983

— ● —

ENROLLED

HOUSE BILL No. 1894...

(By Mr. Doff + Mr. Farley)

— ● —

Passed March 11, 1983

In Effect From Passage



ENROLLED

H. B. 1894

(By MR. GOFF and MR. FARLEY)

[Passed March 11, 1983; 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 transfers exempt from inheritance and transfer taxes; pension benefits received by beneficiaries of policemen's and firemen's pension funds.

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:

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
6 and distribution from any person who is a resident of the
7 state at the time of his death and who shall die seized or
8 possessed of property.

9 (b) By will or by laws regulating descent and distribu-
10 tion of property within the state, or within its taxing jurisdic-
11 tion, and the decedent was a nonresident of the state at the
12 time of his 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
16 the grantor, vendor or donor, or intended to take effect
17 in possession or enjoyment at or after such death, or where
18 any change in the use or enjoyment of property included
19 in such transfer, or the income thereof, may occur in the
20 lifetime of the grantor, vendor or donor, by reason of any
21 power reserved to, or conferred upon, the grantor, vendor
22 or donor, either solely or in conjunction with any person
23 or persons, to alter, or to amend, or to revoke any trans-
24 fer, or any portion thereof, as to the portion remaining at
25 the time of death of the grantor, vendor or donor, thus
26 subject to alteration, amendment or revocation. If any one
27 of the transfers mentioned in this subdivision is made for
28 valuable consideration, the portion of the transfer for which
29 the grantor, or vendor receives equivalent monetary value is
30 not taxable, but the remaining portion thereof is taxable.
31 Every transfer by deed, grant, sale or gift, made within three
32 years prior to the death of the grantor, vendor or donor,
33 without adequate valuable consideration, shall be presumed
34 to have been made in the contemplation of death within the
35 meaning of this subdivision.

36 (d) By any person who shall transfer any property which
37 he owns, or shall cause any property to which he is absolutely
38 entitled to be transferred to or vested in himself and any
39 other person jointly, with the right of survivorship, in whole or
40 in part, in such other person, a transfer shall be deemed to
41 occur and to be taxable under the provisions of this article
42 upon the vesting of such title in the survivor: *Provided,*
43 That this subdivision shall not apply to bank accounts and to
44 shares or savings accounts in federal savings and loan as-
45 sociations organized under the federal homeowners' loan act
46 of one thousand nine hundred thirty-three, as amended,
47 or in building and loan associations organized under article
48 six, chapter thirty-one of this code, payable to the class
49 designated in clause (a), section two of this article in a
50 total amount of twenty-five hundred dollars or less: *Pro-*
51 *vided, however,* That in the case of a surviving spouse, not
52 more than fifty percent of the value of any transfer mentioned

53 in this subdivision (d) shall be included and taxed in any
54 such decedent's estate.

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

57 (1) *General power.*—Any transfer involving the crea-
58 tion of a general power of appointment shall be treated as
59 transferring to the donee of the power a fee or equivalent
60 interest in the property which is subject to the power.

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

74 (f) By the exercise or nonexercise of a general power of
75 appointment:

76 (1) *Power that remains unexercised at time of death.*—
77 If at the time of his death a decedent has a general power
78 of appointment with respect to property, the exercise of
79 that power is subject to tax as a transfer of the property
80 from the decedent to the person to whom the property is
81 appointed. The failure of the decedent to exercise a general
82 power of appointment is subject to tax as a transfer of the
83 property from the decedent to the person to whom the property
84 passes by virtue of the nonexercise of the power. For purposes
85 of this paragraph the power of appointment shall be con-
86 sidered to exist on the date of the decedent's death even
87 though the exercise of that power is subject to a precedent
88 giving of notice or even though the exercise of the power takes
89 effect only on the expiration of a stated period after its exer-

90 cise, whether or not on or before the date of the decedent's
91 death, notice has been given or the power has been exercised.

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

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

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

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

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

128 accident insurance payable to a named beneficiary or bene-
129 ficiaries whether directly or in trust or otherwise.

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

138 Notwithstanding anything contained herein to the con-
139 trary, there shall be exempt from tax hereunder the proceeds
140 of an annuity or other payment, whether attributable to em-
141 ployer contribution, employee contribution or otherwise, re-
142 ceivable by any beneficiary under:

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

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

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

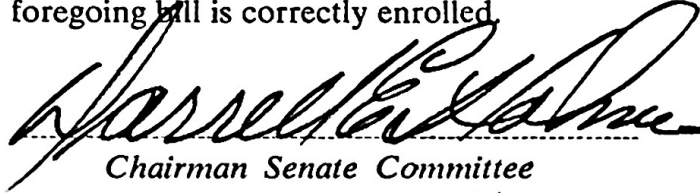
162 (4) Annuity under the retired serviceman's family pro-
163 tection plan or survivor benefit plan pursuant to chapter 73
164 of Title 10 of the United States Code;

165 (5) A retirement savings plan for which a deduction has
166 been allowed under section 218 of the Internal Revenue Code;

167 (6) A pension or relief fund for policemen and firemen
168 established pursuant to the provisions of section sixteen,
169 article twenty-two, chapter eight of this code; and the effect
170 of this exemption from taxation with respect to surviving
171 spouses and dependent children of deceased policemen and
172 firemen shall be retroactive to the first day of January, one
173 thousand nine hundred eighty-one.

174 All references to the Internal Revenue Code shall be to
175 the Internal Revenue Code of 1954, as amended, as in effect
176 on the first day of January, one thousand nine hundred
177 seventy-six. All references to the United States Code shall
178 be to the United States Code in effect on the first day of Janu-
179 ary, one thousand nine hundred seventy-six.

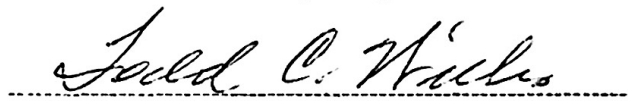
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee



Chairman House Committee

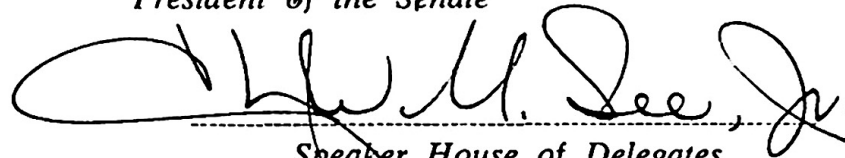
Originating in the House.

Takes effect from passage.

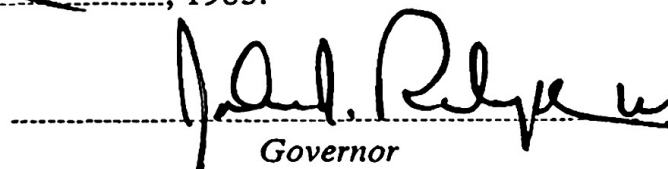

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 27
day of March, 1983.


Governor

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