No: 1894

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Date 3-27-83

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983

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ENROLLED

HOUSE BILL No. 1894

(By Mr. Goff + 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.

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 subdivision shall not apply to bank accounts and to shares or savings accounts in federal savings and loan associations organized under the federal homeowners' loan act of one thousand 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 clause (a), section two of this article in a total amount of twenty-five hundred dollars or less: *Provided, however,* That in the case of a surviving spouse, not more than fifty percent 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 transferring 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 transferring 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 possession. 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 nonexercise 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 exer-

cise, 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 to 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, including (1) all such policies or contracts hereafter issued, and (2) all such policies or contracts now in force: *Provided,* That there shall be exempt from the provisions of this subdivision the proceeds of such contracts or policies:

(i) 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 beneficiary bear to the total premiums paid;

(ii) 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 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 218 of the Internal Revenue Code;

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

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.

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

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Chairman Senate Committee

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Chairman House Committee

Originating in the House.

Takes effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker House of Delegates

The within ......is approved...... this the ......27......

day of ......March......, 1983.

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Governor