ENROLLED

Committee Substitute for
SENATE BILL NO. 73

(By Mr. [Signature])

PASSED April 12, 1985

In Effect January 1, 1985
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 73
(MR. LOEHR AND MR. TONKOVICH, MR. PRESIDENT, original sponsors)

(Originating in the Select Committee on
Economic Development.)

[Passed April 12, 1985; to take effect July 1, 1985.]

AN ACT to repeal article eleven, chapter eleven of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended; to amend and reenact section two, article nine,
and section three, article ten, both of said chapter eleven; to
amend said chapter eleven by adding thereto a new article,
designated article eleven; and to amend and reenact section
one, article eleven-a of said chapter, all relating generally to
death taxes imposed by this state; abolishing inheritance
and transfer taxes for persons dying after June thirtieth, one
thousand nine hundred eighty-five, but fully preserving
such taxes for persons dying on or before such date;
imposing estate taxes for persons dying after June thirtieth,
one thousand nine hundred eighty-five; limiting amount of
such estate tax to that for which full credit is allowed against
federal estate taxes; permitting proration of such federal
credit when property of decedent located in and taxed by
two or more states; exempting from tax estates not required
to file federal estate tax return; providing short title;
defining terms; tying definitions of certain terms to definitions for federal estate tax purposes when terms used in similar context, and exceptions thereto; providing procedures for administration and collection of tax; incorporating provisions of West Virginia tax procedure and administration act, except as specifically provided; providing for criminal penalties and adopting provisions of West Virginia tax crimes and penalties act; providing for termination of tax if credit against federal estate taxes for state taxes abolished; providing rules of construction and interpretation and for severability of provisions; and authorizing compromise of estate taxes under Uniform Act on Interstate Compromise of Death Taxes.

Be it enacted by the Legislature of West Virginia:

That article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section two, article nine, and section three, article ten, both of said chapter eleven, be amended and reenacted; that said chapter eleven be amended by adding thereto a new article, designated article eleven; and that section one, article eleven-a of said chapter be amended and reenacted, all to read as follows:

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-2. Application of this article.

(a) The provisions of this article shall apply to the following taxes imposed by chapter eleven: (1) The inheritance and transfer taxes and estate taxes imposed by article eleven; (2) the business franchise registration tax imposed by article twelve; (3) the annual tax on incomes of certain carriers imposed by article twelve-a; (4) the business and occupation tax imposed by article thirteen; (5) the gasoline and special fuels excise tax imposed by article fourteen; (6) the motor carrier road tax imposed by article fourteen-a; (7) the consumers sales and service tax imposed by article fifteen; (8) the use tax imposed by article fifteen-a; (9) the cigarette tax imposed by article seventeen; (10) the soft drinks tax imposed by article nineteen; (11) the personal income tax imposed by article twenty-one; and (12) the corporation net income tax imposed by article twenty-four.

(b) The provisions of this article shall also apply to the
West Virginia tax procedures and administration act in article ten of chapter eleven, and to any other articles of this chapter when such application is expressly provided for by the Legislature.

(c) Each and every provision of this article shall apply to the articles of this chapter listed in subsections (a) and (b), with like effect, as if the provisions of this article were applicable only to such tax and were set forth in extenso in such article.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-3. Application of this article.

(a) The provisions of this article shall apply to the inheritance and transfer taxes, the estate tax, interstate compromise and arbitration of inheritance and death taxes, the business franchise registration certificate tax, the annual tax on incomes of certain carriers, the business and occupation tax, the consumers sales and service tax, the use tax, the cigarette tax, the soft drinks tax, the personal income tax, the corporation net income tax, the gasoline and special fuels excise tax, the motor carrier road tax, and the tax relief for elderly homeowners and renters administered by the state tax commissioner. This article shall not apply to ad valorem taxes on real and personal property, the corporate license tax or any other tax not listed hereinafter.

(b) The provisions of this article shall also apply to any other article of this chapter when such application is expressly provided for by the Legislature.

ARTICLE 11. ESTATE TAXES.

§11-11-1. Short title; arrangement and classification.

This article shall be known as the “West Virginia Estate Tax Act.”


(a) General.—When used in this article, or in the administration of this article, terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition.
(b) **Terms defined.**

1. **Alien.**—The term "alien" means a decedent who at the time of his or her death, was not domiciled in this state or any other state of the United States, and was not a citizen of the United States.

2. **Decedent or transferor.**—The terms "decedent" or "transferor" are used herein interchangeably and mean a deceased natural person by or from whom a transfer is made; and include any testator, intestate grantor, bargainor, vendor, assignor, donor, joint tenant or insured.

3. **Delegate.**—The term "delegate" in the phrase "or his delegate," when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the function or functions mentioned or described in the context.

4. **Estate or property.**—The terms "estate" or "property" mean the real or personal property or interest therein of a decedent or transferor, and includes all the following:
   - **(A)** All intangible personal property of a resident decedent within or without this state or subject to the jurisdiction of this state.
   - **(B)** All intangible personal property in this state belonging to a deceased nonresident of the United States, including all stock of a corporation organized under the laws of this state, or which has its principal place of business or does the major part of its business in this state, or of a federal corporation or national bank which has its principal place of business or does the major part of its business in this state, excluding, however, savings accounts and savings and loan associations operating under the authority of the state banking commissioner or the federal home loan bank board, and bank deposits, unless those deposits are held and used in connection with a business conducted or operated, in whole or in part, in this state.

5. **Federal credit.**—The term "federal credit" means the maximum amount of the credit for state death taxes allowable by Section 2011, credit against federal estate tax (or Section 2102 in the case of an alien) and Section 2602,
credit against the federal tax on generation-skipping transfers of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States, in respect to a decedent's taxable estate. The term "maximum amount" shall be construed so as to take full advantage of such credit as the laws of the United States may allow: Provided, That in no event shall such amount be less than the federal credit allowable by Sections 2011, 2102 and 2602 of the Internal Revenue Code, as it existed on January one, one thousand nine hundred eighty-five.

(6) Gross estate.—The term "gross estate" means the gross estate of the decedent as defined in Section 2031 (or Section 2103 in the case of an alien) of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States.

(7) Includes and including.—The words "includes" and "including" when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(8) Intangible personal property.—The term "intangible personal property" means incorporeal personal property including deposits in banks, negotiable instruments, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in personal property, evidences of debt and choses in action generally.

(9) Internal Revenue Code.—The term "Internal Revenue Code" means the United States Internal Revenue Code of 1954, as amended and in effect on the first day of January, one thousand nine hundred eighty-five, including all changes to such code enacted subsequent to such date, that are similar to or a replacement of the section cited or referred to.

(10) Net estate.—The term "net estate" means the net estate of the decedent as defined in Section 2051 of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States.

(11) Nonresident.—The term "nonresident" means a decedent who was a citizen of the United States, but was domiciled outside the state of West Virginia at the time of his or her death.
(12) **Notice.**—The term “notice” means a written notice sent to the last known address of the addressee and shall be effective upon mailing.

(13) **Other state.**—The term “other state” means any state of the fifty states in the United States (other than this state) and includes the District of Columbia and any possession or territory of the United States.

(14) **Person.**—The term “person” includes natural person, corporation, society, association, partnership, joint venture, syndicate, estate, trust or other entity under which business or other activities may be conducted.

(15) **Person required to file.**—The phrase “person required to file” means any person, including a personal representative, qualified heir, distributee, or trustee required or permitted to file a federal estate tax return, or a West Virginia estate tax return, pursuant to the provisions of the Internal Revenue Code or this article.

(16) **Personal representative.**—The terms “personal representative” and “fiduciary” are used interchangeably and mean:

(A) The personal representative of the estate of the decedent, appointed, qualified and acting within this state; or

(B) If there is no personal representative appointed, qualified and acting within this state, then any person in actual or constructive possession of the West Virginia gross estate of the decedent. The term “personal representative” includes the executor of a will, the administrator of the estate of a deceased person, the administrator of such estate with the will annexed, the administrator de bonis non of such estate, whether there be a will or not, the sheriff or other officer lawfully charged with the administration of the estate of a deceased person, and every other curator or committee of a decedent’s estate for or against whom suits may be brought for causes of action which accrued to or against such decedent.

(17) **Real property situated in this state.**—The phrase “real property situated in this state” means any and all interests in real property located in this state, including leasehold interests, royalty interests, production payments and working interests in coal, oil, gas and other natural resources.
131 (18) **Resident.**—The term “resident” means a decedent who was domiciled in the state of West Virginia at the time of his or her death.

134 (19) **State.**—The term “state” means any state, territory or possession of the United States and the District of Columbia.

137 (20) **Tangible personal property.**—The term “tangible personal property” means corporeal personal property including money.

140 (21) **Tax.**—The term “tax” means the tax imposed by this article, and includes any additions to tax, penalties and interest imposed by this article or article ten of this chapter.

143 (22) **Tax commissioner.**—The term “tax commissioner” means the tax commissioner of the state of West Virginia or his delegate.

146 (23) **Taxable estate.**—The term “taxable estate” means the taxable estate of the decedent as defined in Section 2051 (or Section 2106 in the case of an alien) of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States.

149 (24) **Taxpayer.**—The term “taxpayer” means any person required to file a return for the tax imposed by this article and any person liable for payment of the tax imposed by this article.

152 (25) **This code.**—The term “this code” means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

155 (26) **This state.**—The term “this state” means the state of West Virginia.

158 (27) **Transfer.**—The term “transfer” means “transfer” as defined in Sections 2001, 2101, 2601 of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States. It includes the passage of any property, or any interest therein, or income therefrom, in possession or enjoyment, present or future, in trust or otherwise, whether by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment.

161 (28) **Transferee.**—The term “transferee” means any person to whom a transfer is made and includes any legatee, devisee, heir, next of kin, grantee, donee, vendee, assignee, successor, survivor or beneficiary.
173  (29) United States.—The term “United States,” when
174  used in a geographical sense, includes only the fifty states
175  and the District of Columbia.
176  (30) Value.—The term “value” means the value of
177  property, the value of the gross estate or the value of the
178  taxable estate as finally determined for federal estate tax
179  purposes under the laws of the United States relating to
180  federal estate taxes.
181  (c) Any term used in this article shall have the same
182  meaning as when used in a comparable context in the laws
183  of the United States relative to estate taxes, unless a
184  different meaning is clearly required by the provisions of
185  this article. Any reference in this article to the laws of the
186  United States relating to federal estate taxes shall mean the
187  provisions of the Internal Revenue Code of 1954, and
188  amendments thereto, and other provisions of the laws of the
189  United States relating to federal estate taxes, as the same
190  may be or become effective at any time or from time to time.

§11-11-3. Imposition of tax.

1 Whenever a federal estate tax is payable to the United
2 States, there is hereby imposed a West Virginia estate tax
3 equal to the portion, if any, of the maximum allowable
4 amount of federal credit for state death taxes which is
5 attributable to property located in this state, or within its
6 taxing jurisdiction. In no event, however, shall the estate
7 tax hereby imposed result in a total death tax liability to
8 this state and the United States in excess of the death tax
9 liability to the United States which would result if this
10 article were not in effect.

§11-11-4. Tax on transfer of estate of residents; credit;
property of residents defined.

1 (a) Imposition of tax.—A tax in the amount of the
2 federal credit is imposed on the transfer of the taxable
3 estate of every resident decedent, subject, where applicable,
4 to the credit provided for in subsection (b).
5  (b) Credit.—If property of a resident is subject to a
6 death tax imposed by another state for which a federal
7 credit is allowed, the amount due under this section shall be
8 credited with the lesser of:
9  (1) The amount of the death tax paid to the other state,
or states, and credited against the federal estate tax and
federal tax on generation-skipping transfers; and
(2) The amount computed by multiplying the amount of
the federal credit by a fraction, the numerator of which is
the value of that part of the gross estate over which another
state (or states) has (or have) jurisdiction to the same extent
to which West Virginia would exert jurisdiction under this
article with respect to residents of such other state (or
states). The denominator of the fraction shall be the value of
the decedent’s gross estate.
(c) Property of resident.—The property of a resident
includes:
(1) Real property situated in this state;
(2) Tangible personal property having its actual situs in
this state; and
(3) Intangible personal property owned by the resident,
regardless of where it is located.
§11-11-5. Tax on transfer of estate of nonresidents; property of
nonresidents defined; exemption.
(a) Imposition of tax.—A tax in an amount computed as
provided in this section is imposed on the transfer of the
taxable estate located in West Virginia of every nonresident
decedent.
(b) Amount of tax.—The tax shall be an amount
computed by multiplying the federal credit by a fraction,
the numerator of which is the value of that part of the gross
estate over which West Virginia has jurisdiction for estate
tax purposes. The denominator shall be the value of the
decedent’s gross estate.
(c) Property of nonresident.—For purposes of this
section, property included in the gross estate of a
nonresident which is taxable under this section shall
include:
(1) Real property and real property interests located in
this state, including (but not limited to) mineral interests,
royalties, production payments, leasehold interests or
working interests in coal, oil, gas or any other natural
resource.
(2) Tangible personal property having an actual situs in
this state.
§11-11-6. Tax on transfer of estate of aliens.

(a) Imposition of tax.—A tax in the amount computed as provided in this section is imposed on the transfer of the taxable estate located in West Virginia of every alien. Taxable transfers include:

(1) Real property situated in this state;
(2) Tangible personal property having an actual situs in this state; and
(3) Intangible personal property physically present within this state of every decedent who, at the time of his or her death, was not a citizen of the United States.

(b) Amount of tax.—The tax shall be an amount computed by multiplying the federal credit by a fraction, the numerator of which shall be the value of that part of the gross estate over which this state has jurisdiction for estate tax purposes. The denominator shall be the value of the decedent’s gross, wherever situate, that is taxable by the United States.

(c) Stock of West Virginia corporations.—For purposes of this section, stock in a corporation organized under the laws of this state shall be deemed to be physically present within this state.


The personal representative, within two months after the decedent’s death, or within a like period after qualifying as such, shall give written notice of the decedent’s death to the tax commissioner on the form prepared and published by the tax department known as the preliminary notice and report. If a federal estate tax return is required by the applicable provisions of the federal Internal Revenue Code, then a copy of the preliminary notice filed with the federal government may be filed with the tax commissioner in lieu of such preliminary notice and report.


(a) When no return required.—No West Virginia estate tax return needs to be filed if the estate of the decedent is not subject to the tax imposed by this article.

(b) Returns by personal representative.—The personal representative of every estate subject to the tax imposed by this article, who is required by the laws of the United States
to file a federal estate tax return, shall file with the tax commissioner, on or before the date the federal estate tax return is required to be filed:

(1) A return for the tax due under this article; and

(2) An executed copy of the federal estate tax return.

(c) Returns by beneficiaries.

(1) If the personal representative fails to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein. The providing of such information shall not, in and of itself, exonerate the personal representative from any additions to tax or penalties prescribed by law for failure to file a complete return.

(2) Upon notice from the tax commissioner, a beneficiary of the estate, or other person holding a legal or beneficial interest therein, shall file a return under this article providing such information as the tax commissioner may request pertaining to the interest of the beneficiary, or other person, in the estate of the decedent.

(d) Returns due.—Returns made under this article shall be filed within nine months after the date of the decedent's death.

(e) Place of filing.—Estate tax returns shall be filed with the tax commissioner at his office in Charleston, West Virginia.


(a) Extension of time.—If the personal representative has obtained an extension of time for filing the federal estate tax return, the filing required by section eight shall be extended until the end of the time period granted in the extension of time for filing the federal estate tax return.

(b) Copy of federal extension.—Upon obtaining an extension of time for filing the federal estate tax return, the personal representative shall provide the tax commissioner with a true copy of the instrument providing for this extension within thirty days after receipt of it.

(c) Payment of tax.—An extension of the time for filing a return shall not operate to extend the time for payment of the tax.
§11-11-10. Amended returns.
(a) When required.—If the personal representative files an amended federal estate tax return, he shall, within sixty days thereafter, file an amended return under this article, and give such information as the tax commissioner may require. Such amended return shall include a copy of the amended federal estate tax return.
(b) Payment of additional tax.—Any additional tax due under this article shall be remitted when the amended return is filed.

(a) Authority of tax commissioner to execute return.—If any person fails to file a return at the time prescribed by law, or files (willfully or otherwise) a false or fraudulent return, the tax commissioner shall make the return from his own knowledge and from such information as he can obtain through testimony or otherwise.
(b) Status of returns.—A return so made and subscribed by the tax commissioner shall be prima facie good and sufficient for all legal purposes.

(a) Report of federal change.—If the amount of the federal taxable estate reported on federal estate tax return is changed or corrected by the United States Internal Revenue Service, or other competent authority, the personal representative shall report the change or correction within ninety days after the final determination of the change, or correction, or as otherwise required by the tax commissioner. Such report shall concede the accuracy of the change, or correction, or state whether and wherein the determination is believed to be erroneous. The imposition of an additional federal estate tax under Section 2032A of the Internal Revenue Code shall constitute a change. The tax commissioner may by regulation prescribe exceptions to the requirements of this section as he deems appropriate.
(b) Payment of deficiency.—If, based upon any deficiency in federal estate tax and the ground therefore, it shall appear that the amount of tax previously paid under this article is less than the amount of tax due and owing, the
difference together with interest at the rate of one percent per month from the date the tax became delinquent under this article shall be remitted at the time the notice required by this section is filed.

(c) Failure to give notice.—In the event the personal representative required to file the return and pay the tax required by this article shall fail to give the notice required by this section, any additional tax which may be due and owing may be assessed by the tax commissioner at any time notwithstanding the provisions of section fifteen, article ten of this chapter.


(a) Payment by personal representative.—The tax imposed by this article shall be paid by the personal representative. Liability for payment of the tax continues until the tax is paid.

(b) Due date.—The tax imposed by this article is due and payable at the date of the decedent's death.

(c) Delinquent date.—The tax imposed by this article becomes delinquent upon the expiration of nine months after the date on which it becomes due and payable, if not paid within that time.


(a) General.—If an extension of time for payment of federal estate tax has been granted and the tax commissioner finds that payment by the due date of the tax imposed by this article, or any part thereof, would impose undue hardship upon the estate, the tax commissioner may extend the time for payment of any such part, but no extension shall be for more than one year at a time. The aggregate of extensions with respect to any estate shall not exceed ten years from the due date.

(b) Payment of tax where extension granted.—If an extension of time for payment has been granted under this section, the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, unless a further extension is granted. If the time for payment is thus extended, there shall be collected, as part of such amount, interest at the rate of twelve percent per annum of the amount due, from
§11-11-15. Interest.

(a) Rate.—The tax imposed by this article does not bear interest if it is paid before the expiration of nine months after the date of death of the decedent. If that tax is paid after that date, the tax bears interest at the rate of twelve percent per annum from the date by which it should have been paid (determined without regard to any extension of time for payment) until the date it is paid.

(b) Application of payment.—Every payment of delinquent tax shall be applied, first, to any interest due on that tax, secondly, to any additions to tax or penalty imposed by article ten of this chapter, and then, if there is any balance, to the tax itself.

§11-11-16. Receipts for taxes.

(a) Receipts in triplicate.—The tax commissioner shall issue to the personal representative, upon payment of the tax imposed by this article, receipts in triplicate, any of which shall be sufficient evidence of such payment, and shall entitle the personal representative to be credited and allowed the amount thereof by any county commission or court having jurisdiction to audit or settle his accounts.

(b) Application of personal representative for receipt.—If the personal representative files a complete and correct return under this article, and there has been a final determination of the federal estate tax liability, he may make written application to the tax commissioner for determination of the amount of the tax and discharge from personal liability therefor. The tax commissioner, as soon as possible, and in any event within one year after receipt of such application, shall notify the personal representative of the amount of the tax; and upon payment thereof the personal representative shall be discharged from personal liability for any additional tax thereafter found to be due, and shall be entitled to receive from the tax commissioner a receipt in writing showing such discharge: Provided, That such discharge shall not operate to release the gross estate of the lien of any additional tax that may thereafter be found to be due nor release the personal representative if there has been negligence or fraud.
§11-11-17. Lien for nonpayment of tax; releases.

(a) **Lien created.**—Unless the tax imposed by this article is sooner paid in full, it shall be a lien for ten years after the death of the decedent upon all property, real or personal, of such decedent located in this state, except as provided in subsection (b).

(b) **Exceptions.**

(1) Such part of the property of the decedent as may at the time be subject to the lien provided for under subsection (a) shall be divested of such lien to the extent used for payment of charges against the estate or expenses of its administration allowed by the county commission or court having jurisdiction thereof.

(2) Such part of the personal property of the decedent as may at the time be subject to the lien provided for under subsection (a) shall be divested of such lien upon the conveyance or transfer of such property to a bona fide purchaser or holder of a security interest for an adequate and full consideration in money or money's worth. Such liens shall then attach to the consideration received for such property from such purchaser or holder of a security interest.

(c) **Real property.**—Real property shall not be divested of such lien, except as provided in subsections (b)(1) and (d) of this section.

(d) **Release of lien.**—When any lien under this section has attached and the tax commissioner is satisfied that no tax liability exists, or that the tax liability of the estate has been fully discharged, the tax commissioner shall issue a certificate releasing all property of such estate from the lien herein imposed. If the tax commissioner is satisfied that the tax liability of the estate has been provided for, he shall issue a certificate releasing any surplus property of such estate from the lien imposed by this section.

§11-11-18. Discharge of estate; notice of lien; limitation on lien; etc.

(a) Where no receipt for payment of the taxes, or no receipt of nonliability for taxes has been issued or recorded as provided for in this article, the property constituting the estate of the decedent in this state shall be deemed fully acquitted and discharged of all liability for estate taxes.
under this article after a lapse of ten years from the date of
the filing with the tax commissioner of notice of the
decedent's death, or after a lapse of ten years from the date
of the filing with the tax commissioner of an estate tax
return, whichever date shall be earlier, unless the tax
commissioner shall make out and file and have recorded in
the office of the clerk of the county wherein any part of the
estate of the decedent may be situated in this state, a notice
of lien against the property of the estate, specifying the
amount or approximate amount of taxes claimed to be due
to the state under this article, which notice of lien shall
continue said lien in force for an additional period of five
years, or until payment is made.

(b) Notwithstanding anything to the contrary in this
section or this article, no lien for estate taxes under this
article shall continue for more than twenty years from the
date of death of the decedent, whether the decedent be a
resident or a nonresident of this state.

§11-11-19. Final accounting delayed until liability for tax
determined.

(a) No final account of a personal representative in any
probate proceeding, who is required to file a federal estate
tax return, shall be allowed and approved by the county
commission, or the clerk thereof, before whom such
proceeding is pending, unless the commission finds that the
tax imposed on the transfer of property by this article has
been paid in full, or that no such tax is due.

(b) No final account of a personal representative of an
estate shall be allowed by any county commission, or clerk
thereof, unless such account shows and the county
commission, or clerk thereof, finds, that all taxes imposed
by this article upon such personal representative, which
have become payable, have been paid.

(c) The certificate of waiver and/or acquittance of the
tax commissioner of nonliability for taxes, or his receipt for
the amount of the tax herein certified, shall be conclusive in
such proceedings as to the liability or the payment of the
tax, to the extent of said certificate or waiver and/or
acquittance.

§11-11-20. Liability of personal representatives; etc.

(a) Personal representative.—Any personal
representative who distributes any property without first
paying, securing another's payment of, or furnishing
security for payment of the taxes due under this article, is
personally liable for the taxes due to the extent of the value
of any property that may come or that may have come into
the possession of the personal representative. Security for
payment of taxes due under this article shall be in an
amount equal to or greater than the value of all property
that is or has come into the possession of the personal
representative, as of the time the security is furnished.
(b) Other person.—Any person who has the control,
custody or possession of any property and who delivers any
of the property to the personal representative or legal
representative of the decedent outside this state without
first paying, securing another's payment of, or furnishing
security for payment of the taxes due under this article, is
liable for the taxes due under this article to the extent of the
value of the property delivered. Security for payment of the
taxes due under this article shall be in an amount equal to or
greater than the value of all property delivered to the
personal representative or legal representative of the
decedent outside this state by such a person.
(c) Persons not having control.—For the purpose of this
section, persons do not have control, custody or possession
of a decedent's property, if they are not responsible for
paying the tax due under this section, such as transferees,
which term includes but is not limited to stockbrokers or
stock transfer agents, banks and other depositories of
checking and savings accounts, safe deposit companies and
life insurance companies.
(d) Reliance upon release.—For the purposes of this
section, any person who has the control, custody or
possession of any property and who delivers any of the
property to the personal representative or legal
representative of the decedent may rely upon the release
furnished by the tax commissioner to the personal
representative as evidence of compliance with the
requirements of this article, and make such deliveries and
transfers as the personal representative may direct without
being liable for any taxes due under this article.
(e) Discharge of personal liability for federal estate
taxes.—If a personal representative receives a discharge
from personal liability for federal estate taxes pursuant to Section 2204 of the Internal Revenue Code, and if the personal representative makes written application to the tax commissioner for determination of the amount of the tax due under this article and discharged from personal liability, the tax commissioner, within two months after receiving satisfactory evidence of the Section 2204 discharge, but not after the expiration of the period for issuance of a deficiency assessment, shall notify the personal representative of the amount of the tax. The personal representative, upon payment of the amount of which he is notified (other than any portion for which an extension of time for payment has been granted), and upon furnishing any bond which may be required for any amount for which the time for payment has been extended, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing the discharge.


(a) General.—A resident personal representative, holding personal property (tangible or intangible) of a deceased nonresident subject to tax under this article, shall not deliver such property to the personal representative of the domiciliary estate, or to any other person, until after the resident personal representative shall have deducted the tax therefrom, or collected it from the personal representative of the domiciliary estate and remitted it to the tax commissioner.

(b) Failure of domiciliary personal representative to pay tax.—When the transfer of personal property of a nonresident decedent is taxable under this article and the personal representative of the domiciliary estate neglects or refuses to pay the tax upon demand of a resident personal representative, or if for any reason the tax is not paid within nine months after the decedent’s death, the resident personal representative may, upon such notice as the Circuit Court of Kanawha County may direct, be authorized to sell such property, or if the same can be divided, such portion thereof as may be necessary, and shall
§11-11-22. Duties and powers of corporate personal representatives of nonresident decedents.

If the personal representative of the estate of a nonresident is a corporation duly authorized, qualified and acting as such personal representative in the jurisdiction of the domicile of the decedent, it shall be under the duties and obligations as to the giving of notices and filing of returns required by this article, and may bring and defend actions and suits as may be authorized or permitted by this article, and articles nine and ten of this chapter, to the same extent as an individual personal representative, notwithstanding that such corporation may be prohibited from exercising in this state any powers as personal representative. Nothing herein contained shall be taken or construed as authorizing corporations not authorized to do business in this state to qualify or act as personal representative, administrator or in any other fiduciary capacity, if otherwise prohibited by the laws of this state, except to the extent herein expressly provided.

§11-11-23. Proof of payment of death taxes to state of domicile.

(a) General.—At any time before the expiration of eighteen months after the qualification in this state of any executor of the will of, or administrator of the estate of, any nonresident decedent, such executor or administrator shall file with the clerk of the county commission of the county in which he qualified proof that all death taxes which are due to the state of domicile of such decedent, or to any political subdivision thereof, have been paid, or secured, or that no such taxes are due, as the case may be, unless it appears that letters of probate or administration have been issued in the state of domicile.

(b) Form of proof.—The proof required by subsection (a) may be in the form of a certificate issued by the official or body charged with the administration of the death tax laws of the domiciliary state.

(c) Notice to domiciliary state if proof not filed.—If such proof is not filed within eighteen months after the qualification in this state of any personal representative of
a nonresident decedent, then the clerk of the county commission shall forthwith notify by mail the official or body of the domiciliary state charged with the administration of the death tax laws thereof with respect to such estate and shall state in such notice, so far as it is known to him:

1. The name, date of death and last domicile of such decedent;
2. The name and address of each executor or administrator;
3. A summary of the values of the real estate, tangible personal property and intangible personal property, wherever situated, belonging to such decedent at the time of his death; and
4. The fact that such executor or administrator has not filed, within the time prescribed by law, proof of payment of death taxes to the state of domicile of the nonresident decedent.

To such notice the clerk of the county commission shall attach a plain copy of the will and codicils of such decedent, if he died testate, or, if he died intestate, a list of his heirs and next of kin, so far as is known to such clerk.

(d) Petition of domiciliary state.—Within sixty days after the mailing of the notice provided in the preceding subsection, the official or body charged with the administration of the death tax laws of the domiciliary state may file with the county clerk in this state a petition for an accounting in such estate. Such official body of the domiciliary state shall, for the purpose of this article, be a party interested for the purpose of petitioning such county clerk for such an accounting. If such petition be filed within the period of sixty days, such county clerk shall order such accounting and upon such accounting being filed and approved, shall decree the remission of the fiduciary appointed by the domiciliary probate court of the balance of the intangible personal property after payment of creditors and expenses of administration in this state.

(e) Final accounting not granted without compliance.—Unless the provisions of either subsection (c) or (d) of this section shall have been complied with, no such executor or administrator shall be entitled to a final accounting or discharge by any county commission of this state.

1 (a) General.—For purposes of this article, every person shall be presumed to have died a resident and not a nonresident of this state:
2 (1) If such person has dwelled or lodged in this state during and for the greater part of any period of twelve consecutive months in the twenty-four months next preceding the decedent's death, notwithstanding the fact that from time to time during such twenty-four months such person may have sojourned outside of this state, and without regard to whether or not such person:
3 (A) May have voted in this state;
4 (B) May have been entitled to vote in this state; or
5 (C) May have been assessed for taxes in this state.
6 (2) If such person has been a resident of this state, sojourning outside this state.
7 (b) Proof of domicile.—The burden of proof in an estate tax proceeding shall be upon any person claiming exemption by reason of alleged nonresidency. Domicile shall be determined exclusively in the proceedings provided in this chapter, and orders relating to domicile previously entered in any probate proceedings shall not be conclusive for purposes of the tax imposed by this article.

§11-11-25. Tax due and payable from entire estate; third persons.

1 If the tax, or any part thereof, is paid or collected out of that part of the estate passing to, or in possession of, any person other than the personal representative in his capacity as such, such person shall be entitled to a reimbursement out of any part of the estate still undistributed, or by a just and equitable contribution by the person whose interest in the estate of the decedent would have been reduced if the tax had been paid before distribution of the estate, or whose interest in the estate is subject to an equal or prior liability for the payment of tax, debts or other charges against the estate. It is the purpose and intent of this section that, so far as is practical and unless otherwise directed by the will of the decedent, the tax shall be paid out of the estate before its distribution; but the tax commissioner shall not be charged with enforcing contribution from any person.
§11-11-26. Sale of real estate by personal representative to pay tax.

1 Every personal representative shall have the same right and power to take possession of or sell, convey and dispose of real estate as assets of the estate for the payment of the tax imposed by this article, as he may have for the payment of the debts of the decedent.


1 (a) The estate of each decedent whose property shall be subject to the laws of this state shall be deemed prima facie liable for estate taxes under this article and shall be subject to a lien therefor in such amount as may be later determined to be due and payable on such estate as provided in this article.

2 (b) This presumption of liability shall begin on the date of the death of the decedent and shall continue until the full settlement of all taxes which may be found to be due under this article, the settlement to be shown by receipts for all taxes due to be issued by the tax commissioner as provided for in this article.

3 (c) Whenever it shall be made to appear to the tax commissioner that an estate is not subject to tax under this article, the tax commissioner shall issue to the personal representative a certificate in writing to that effect, showing such nonliability to tax, which certificate of nonliability shall have the same force and effect as a receipt showing payment. This certificate of nonliability shall be subject to record and admissible in evidence in like manner as receipts showing payment of taxes.

§11-11-28. Person paying tax entitled to reimbursement.

1 If the tax or any part thereof is paid or collected out of that part of the estate passing to or in possession of any person other than the personal representative in his capacity as such, such person shall be entitled to a reimbursement out of any part of the estate still undistributed, or by a just and equitable contribution by the person whose interest in the estate of the decedent would have been reduced if the tax had been before the distribution of the estate, or whose interest in the estate is subject to an equal or prior liability for the payment of the
tax, debts or other charges against the estate, it being the
purpose and intent of this section that insofar as is
practical, and unless otherwise directed by the will of the
decedent, the tax shall be paid out of the estate before its
distribution: Provided, that the tax commissioner shall not
be charged with enforcing contribution from any person or
persons.

§11-11-29. Time for assessment of tax.

(a) General.—The amount of estate tax due under this
article shall be assessed on or before whichever of the
following dates occurs last:
(1) The period specified in section fifteen, article ten of
this chapter, during which an assessment may generally be
issued;
(2) Within a period expiring ninety days after the last
day on which the assessment of a deficiency in federal estate
tax may lawfully be made under applicable provisions of
the Internal Revenue Code; or
(3) Within ninety days after receipt of notice from a
personal representative that the federal estate tax liability
of an estate has been changed.

(b) Exceptions.—In the case of a false or fraudulent
return, or failure to file a return on or before the last
day prescribed for filing, or failure of the personal
representative to give the tax commissioner notice of a
change in the federal estate tax liability of an estate, the tax
may be assessed at any time.

§11-11-30. Refund of excess tax due to overpayment of federal
estate tax.

(a) Claim for refund.—Notwithstanding the provisions
of section fourteen, article ten of this chapter, in the event of
a final determination by the United States Internal Revenue
Service, or other competent authority, of an overpayment of
the estate's federal estate tax liability, the period of
limitation upon claiming a refund reflecting such final
determination in the taxes due under this article shall not
expire until six months after such determination is made by
the United States Internal Revenue Service or other
competent authority.

(b) When determination becomes final.—For purposes
of this section, an administrative determination shall be
deemed to have become final on the date of receipt by the
personal representative, or other interested party, of the
final payment to be made refunding federal estate tax or
upon the last date on which the personal representative, or
any other interested party, shall receive notice from the
United States that an overpayment of federal estate tax has
been credited by the United States against any liability
other than the federal estate tax of said estate. A final
judicial determination shall be deemed to have occurred on
the date on which any judgment entered by a court of
competent jurisdiction, determining that there has been an
overpayment of federal estate tax, becomes final.

§11-11-31. Agreements as to amount of tax due.

For the purpose of facilitating the settlement and
distribution of estates held by personal representatives, the
tax commissioner may, on behalf of the state, agree to the
amount of taxes due or to become due from such personal
representative under the provisions of this article. Payment
in accordance with such agreement shall be full satisfaction
of the taxes to which the agreement relates.

§11-11-32. County commissions to furnish tax commissioner
with names of decedents; etc.

The county commission of all counties of this state, or the
clerks thereof, shall, on or before the tenth day of January,
April, July and October of each calendar year, notify the tax
commissioner of the names of all decedents, the names and
addresses of the respective executors, administrators or
curators appointed and the amount of the bonds, if any,
with respect to all estates of decedents whose wills have
been probated or presented for probate before the county
clerk, or upon which letters testamentary or upon whose
estates letters of administration or curatorship have been
sought or granted, during the preceding quarter. Such
report shall contain any other information which the
county clerk may have concerning the estates of such
decedents. The county clerk shall also furnish forthwith
such further information, from the records and files of the
clerk's office in regard to such estates, as the tax
commissioner may from time to time require.
§11-11-33. Administration of article by tax commissioner.

(a) The tax commissioner shall administer and enforce the tax imposed by this article. He is authorized to require such facts and information to be reported as he deems necessary to enforce the provisions of this article.

(b) Rules and regulations promulgated by the tax commissioner shall follow as nearly as practicable the rules and regulations of the Secretary of the Treasury of the United States. The construction of this article shall further its purpose to simplify the preparation of tax returns, aid in its interpretations through use of federal precedents and improve its enforcement.

(c) The tax commissioner may prescribe the form and content of any return or other documents, including a copy of part or all of a federal return, required to be filed under the provisions of this article.

(d) Reports and returns required to be filed under this article shall be preserved for four years and thereafter until the tax commissioner orders them destroyed.

§11-11-34. Appointment of special appraisers.

The tax commissioner may employ special appraisers for the purpose of determining the value of any property which is, or is believed by the tax commissioner to be, subject to the tax imposed by this article. Such special appraisers shall be paid such compensation as the tax commissioner deems proper.

§11-11-35. Secrecy of information.

Notwithstanding the provisions of article ten of this chapter to the contrary, the tax return of an estate shall be open to inspection by or disclosure to:

(1) The personal representative of the estate;

(2) Any heir at law, next of kin or beneficiary under the will of the decedent, but only if the tax commissioner finds that this heir at law, next of kin or beneficiary has a material interest which will be affected by information contained in the return; or

(3) The attorney for the estate or its personal representative or the attorney-in-fact duly authorized by any of the persons described in paragraph (1) or (2).
§11-11-36. Money penalty for failure to produce records.

If any person:

1. Fails to comply with any duty imposed upon him by this article; or
2. Having in his possession or control any record, file or paper containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprising part of the gross estate of the decedent, fails to exhibit the same upon request to the tax commissioner or any examiner, appraiser or attorney appointed pursuant to this article, who desires to examine the same in the performance of his duties under the article, such person shall be liable to a money penalty of not less than ten nor more than five hundred dollars to be recovered, with costs of suit, in a civil action in the name of the state.

§11-11-37. Interpretation and construction.

(a) No inference, implication or presumption of legislative construction or intent shall be drawn or made by reason of the location or grouping of any particular section, provision or portion of this article; and no legal effect shall be given to any descriptive matter or heading relating to any section, subsection or paragraph of this article.

(b) When not otherwise provided for in this article, the rules of interpretation and construction applicable to the estate tax laws of the United States shall apply to, and be followed in, the interpretation of this article.

(c) The provisions of this article shall be liberally construed in order to insure that the state of domicile of any decedent shall receive any death taxes, together with interest and penalties thereon, due it.

§11-11-38. Estates to which article applies; former law preserved.

(a) Persons dying after June 30, 1985.—Except as otherwise specifically provided, the provisions of this article shall apply to the estate of every person dying on or after the first day of July, one thousand nine hundred eighty-five.

(b) Persons dying before July 1, 1985.—With respect to persons dying prior to the first day of July, one thousand
nine hundred eighty-five, the provisions of article eleven, chapter eleven of this code, in effect on the first day of January, one thousand nine hundred eighty-five, are hereby continued in force, and fully preserved, until their objects have been fully accomplished.

§11-11-39. Effectiveness of this article.

1 This article shall remain in force and effect until either one of the following events occurs:
2 (1) This article is repealed by the Legislature; or
3 (2) The government of the United States ceases to allow credit against its estate tax for payment of state death taxes.

§11-11-40. General procedure and administration.

1 The provisions of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter, shall apply to the tax imposed by this article with like effect as if said act were set forth in extenso in this article, except where it is expressly and specifically provided in this article that a particular provision of this article shall govern and control.

§11-11-41. Criminal penalties.

1 Each and every provision of the "West Virginia Tax Crimes and Penalties Act" set forth in article nine of this chapter, shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

§11-11-42. Severability.

1 If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect, impair or invalidate other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

ARTICLE 11A. INTERSTATE COMPROMISE OF INHERITANCE AND DEATH TAXES.


1 When the state tax commissioner claims that a decedent
was domiciled in this state at the time of his death and the
taxing authorities of another state or states make a like
claim on behalf of their state or states, the state tax
commissioner may make a written agreement of
compromise with the other taxing authorities and the
executor or administrator that a certain sum shall be
accepted in full satisfaction of any and all death taxes
imposed by this state, including any additions to tax,
interest or penalties to the date of filing the agreement. The
agreement shall also fix the amount to be accepted by the
other states in full satisfaction of death taxes. The executor
or administrator is hereby authorized to make such
agreement. Either the state tax commissioner or the
executor or administrator shall file the agreement, or a
duplicate, with the authority that would be empowered to
assess inheritance taxes for this state if there had been no
agreement; and thereupon the tax shall be deemed
conclusively fixed as therein provided. Unless the tax is
paid within thirty days after filing the agreement, additions
to tax, interest and penalties shall thereafter accrue upon
the amount fixed in the agreement but the time between the
decedent's death and the filing shall not be included in
computing the same.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 1985.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within .................. Approved ..................

day of .................. 1985.

Governor
PRESENTED TO THE GOVERNOR

Date  4/19/85
Time  9:50 p.m.