WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1988

ENROLLED

SENATE BILL NO. 276

(By Senator JARRELL)

PASSED MARCH 12, 1988
In Effect 90 days from Passage
AN ACT to repeal section twenty-five, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-eight of said article eleven; to amend and reenact sections sixteen-a and twenty-seven, article two, chapter forty-four of said code; and to amend and reenact article three-a of said chapter forty-four, all relating to making technical corrections in estate and estate tax laws; and providing a method for apportionment of state estate taxes.

Be it enacted by the Legislature of West Virginia:

That section twenty-five, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section twenty-eight of said article eleven be amended and reenacted; that sections sixteen-a and twenty-seven, article two, chapter forty-four of said code be amended and reenacted; and that section eighteen, article three-a of said chapter forty-four be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 11. ESTATE TAXES.

§11-11-28. Apportionment of West Virginia estate taxes; deduction of taxes by the fiduciary from shares of beneficiaries.

1 Whenever there is an estate tax levied or assessed under the provisions of any estate tax law of this state heretofore
or hereafter enacted, the amount of the tax so paid shall be
prorated among the persons interested in the estate to
whom such property is or may be transferred or to whom
any benefit accrues in conformity with the provisions of
section sixteen-a, article two, chapter forty-four of this
code.

CHAPTER 44. ADMINISTRATION OF ESTATES AND
TRUSTS.

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES
OF DECEDENTS.

§44-2-16a. Apportionment of federal and state estate taxes;
fiduciary to deduct taxes from shares of
beneficiaries.

(1) For the purposes of this section the term “persons
interested in the estate” shall include all persons, firms and
corporations who may be entitled to receive or who have
received any property or interest which is required to be
included in the gross estate of a decedent, or any benefit
whatsoever with respect to any such property or interest,
whether under a will or intestacy, or by reason of any
transfer, trust, estate, interest, right, power or
relinquishment of power, taxable under any estate tax law
of the United States or this state heretofore or hereafter
enacted.

(2) Whenever it appears upon any settlement of
accounts or in any other appropriate action or proceeding,
that an executor, administrator, curator or other person
acting in a fiduciary capacity, has paid an estate tax levied
or assessed under the provisions of any estate tax law of the
United States or this state heretofore or hereafter enacted,
on any or with respect to any property required to be
included in the gross estate of a decedent under the
provisions of any such law, the amount of the tax so paid
shall be prorated among the persons interested in the estate
to whom such property is or may be transferred or to whom
any benefit accrues. Such apportionment shall be made in
the proportion that the value of the property, interest or
benefit of each such person bears to the total value of the
property, interests and benefits received by all such persons
interested in the estate, except that in making such
proration each such person shall have the benefit of any exemptions, deductions and exclusions allowed by such law in respect of such person or the property passing to him; and except that notwithstanding the preceding provisions of this sentence in cases where a trust is created, or other provision made whereby any person is given an interest in income, or an estate for years, or for life, or other temporary interest in any property or fund, the tax on both such temporary interest and on the remainder thereafter shall be charged against and paid out of the corpus of such property or fund without apportionment between remainders and temporary estates.

(3) In all cases in which any property required to be included in the gross estate does not come into the possession of the executor, administrator or other fiduciary as such, he shall be entitled, and it shall be his duty, to recover from whomever is in possession, or from the persons interested in the estate, the proportionate amount of such tax payable by the persons interested in the estate with which such persons interested in the estate are chargeable under the provisions of this section.

(4) No executor, administrator or other person acting in a fiduciary capacity shall be required to transfer, pay over or distribute any fund or property with respect to which a federal or West Virginia estate tax is imposed until the amount of such tax or taxes due from the devisee, legatee, distributee or other person to whom such property is transferred is paid to such fiduciary, or, if the apportionment of tax has not been determined, adequate security is furnished by the transferee for such payment.

(5) But it is expressly provided that the foregoing provisions of this section are subject to the following qualification, that none of such provisions shall in any way impair the right or power of any person by will or by written instrument executed inter vivos to make direction for the payment of such estate taxes, and to designate the fund or funds or property out of which such payment shall be made, and in every such case the provisions of the will or of such written instrument executed inter vivos shall be given effect to the same extent as if this section had not been enacted.

(6) The provisions of this section shall be applicable to
§44-2-27. When distributees and legatees may be sued on claims; extent of liability; costs.

(a) Every creditor who has not presented his claim to the fiduciary commissioner before distribution of the surplus by the personal representative, or before that time has not instituted a civil action or suit thereon against the personal representative, may, if not barred by limitation, bring a civil action against the distributees and legatees, jointly or severally, at any time within two years after such distribution. But no distributee or legatee shall be required to pay to creditors suing by virtue of this section a greater sum than the value of what was received by him out of the decedent’s estate, nor shall any distributee or legatee be required to pay to any one creditor a greater proportion of such creditor’s debt than the value of what was received by such distributee or legatee bears to the total estate distributed. A creditor suing by virtue of this section shall not recover against such distributees and legatees the costs of his civil action.

(b) Any creditor of a deceased person upon whose estate there is no administration pursuant to subsection (b), section one of this article, may, if not barred by limitation, bring a civil action against the sole beneficiary at any time within two years after recordation of the appraisement.

ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS; COUNTY OPTION.

§44-3A-18. Apportionment of federal and state estate taxes; fiduciary to deduct taxes from shares of beneficiaries.

(a) For the purposes of this section the term “persons interested in the estate” shall include all persons, firms and corporations who may be entitled to receive or who have received any property or interest which is required to be included in the gross estate of a decedent, or any benefit whatsoever with respect to any such property or interest, whether under a will or intestacy, or by reason of any transfer, trust, estate, interest, right, power or
relinquishment of power, taxable under any estate tax law
of the United States or this state heretofore or hereafter
enacted.

(b) Whenever it appears upon any settlement of
accounts or in any other appropriate action or proceeding,
that an executor, administrator, curator, trustee or other
person acting in a fiduciary capacity, has paid an estate tax
levied or assessed under the provisions of any estate tax law
of the United States or this state heretofore or hereafter
enacted, upon or with respect to any property required to be
included in the gross estate of a decedent under the
provisions of any such law, the amount of the tax so paid
shall be prorated among the persons interested in the estate
to whom such property is or may be transferred or to whom
any benefit accures. Such apportionment shall be made in
the proportion that the value of the property, interest or
benefit of each such person bears to the total value of the
property, interests and benefits received by all such persons
interested in the estate, except that in making such
proration each such person shall have the benefit of any
exemptions, deductions and exclusions allowed by such law
in respect of such person or the property passing to him; and
except that notwithstanding the preceding provisions of
this sentence in cases where a trust is created, or other
provision made whereby any person is given an interest in
income, or an estate for years, or for life, or other temporary
interest in any property or fund, the tax on both such
temporary interest and on the remainder thereafter shall be
charged against and paid out of the corpus of such property
or fund without apportionment between remainders and
temporary estates.

(c) In all cases in which any property required to be
included in the gross estate does not come into the
possession of the executor, administrator or other fiduciary
as such, he shall be entitled, and it shall be his duty, to
recover from whomever is in possession, or from the persons
interested in the estate, the proportionate amount of such
tax payable by the persons interested in the estate with
which such persons interested in the estate are chargeable
under the provisions of this section.

(d) No executor, administrator or other person acting in
a fiduciary capacity shall be required to transfer, pay over
or distribute any fund or property with respect to which a federal or West Virginia estate tax is imposed until the amount of such tax or taxes, due from the devisee, legatee, distributee or other person to whom such property is transferred, is paid to such fiduciary, or, if the apportionment of tax has not been determined, adequate security is furnished by the transferee for such payment.

(e) But it is expressly provided that the foregoing provisions of this section are subject to the following qualification, that none of such provisions shall in any way impair the right or power of any person by will or by written instrument executed inter vivos to make direction for the payment of such estate taxes, and to designate the fund or funds or property out of which such payment shall be made, and in every such case the provisions of the will or of such written instrument executed inter vivos shall be given effect to the same extent as if this section had not been enacted.

(f) The provisions of this section shall be applicable to estates of decedents dying after the enactment of this section.
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.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within...this the...day of..., 1988.

Governor