

70: 276

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988

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## ENROLLED

SENATE BILL NO. 276

(By Senator JARRELL)

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PASSED MARCH 12, 1988

In Effect 90 days from Passage



**ENROLLED**  
**Senate Bill No. 276**

(BY SENATOR JARRELL)

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[Passed March 12, 1988; in effect ninety days from passage.]

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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 section eighteen, 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article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section twenty-eight of said article eleven be amended and reenacted; that sections sixteen-a and twenty-seven, article two, chapter forty-four of said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
- 2 the provisions of any estate tax law of this state heretofore

3 or hereafter enacted, the amount of the tax so paid shall be  
4 prorated among the persons interested in the estate to  
5 whom such property is or may be transferred or to whom  
6 any benefit accrues in conformity with the provisions of  
7 section sixteen-a, article two, chapter forty-four of this  
8 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 (1) For the purposes of this section the term "persons  
2 interested in the estate" shall include all persons, firms and  
3 corporations who may be entitled to receive or who have  
4 received any property or interest which is required to be  
5 included in the gross estate of a decedent, or any benefit  
6 whatsoever with respect to any such property or interest,  
7 whether under a will or intestacy, or by reason of any  
8 transfer, trust, estate, interest, right, power or  
9 relinquishment of power, taxable under any estate tax law  
10 of the United States or this state heretofore or hereafter  
11 enacted.

12 (2) Whenever it appears upon any settlement of  
13 accounts or in any other appropriate action or proceeding,  
14 that an executor, administrator, curator or other person  
15 acting in a fiduciary capacity, has paid an estate tax levied  
16 or assessed under the provisions of any estate tax law of the  
17 United States or this state heretofore or hereafter enacted,  
18 upon or with respect to any property required to be  
19 included in the gross estate of a decedent under the  
20 provisions of any such law, the amount of the tax so paid  
21 shall be prorated among the persons interested in the estate  
22 to whom such property is or may be transferred or to whom  
23 any benefit accrues. Such apportionment shall be made in  
24 the proportion that the value of the property, interest or  
25 benefit of each such person bears to the total value of the  
26 property, interests and benefits received by all such persons  
27 interested in the estate, except that in making such

28 proration each such person shall have the benefit of any  
29 exemptions, deductions and exclusions allowed by such law  
30 in respect of such person or the property passing to him; and  
31 except that notwithstanding the preceding provisions of  
32 this sentence in cases where a trust is created, or other  
33 provision made whereby any person is given an interest in  
34 income, or an estate for years, or for life, or other temporary  
35 interest in any property or fund, the tax on both such  
36 temporary interest and on the remainder thereafter shall be  
37 charged against and paid out of the corpus of such property  
38 or fund without apportionment between remainders and  
39 temporary estates.

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

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

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

69 (6) The provisions of this section shall be applicable to

70 estates of decedents dying after the enactment of this  
71 section.

**§44-2-27. When distributees and legatees may be sued on  
claims; extent of liability; costs.**

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

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

**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.**

1 (a) For the purposes of this section the term "persons  
2 interested in the estate" shall include all persons, firms and  
3 corporations who may be entitled to receive or who have  
4 received any property or interest which is required to be  
5 included in the gross estate of a decedent, or any benefit  
6 whatsoever with respect to any such property or interest,  
7 whether under a will or intestacy, or by reason of any  
8 transfer, trust, estate, interest, right, power or

9 relinquishment of power, taxable under any estate tax law  
10 of the United States or this state heretofore or hereafter  
11 enacted.

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

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

49 (d) No executor, administrator or other person acting in  
50 a fiduciary capacity shall be required to transfer, pay over

51 or distribute any fund or property with respect to which a  
52 federal or West Virginia estate tax is imposed until the  
53 amount of such tax or taxes, due from the devisee, legatee,  
54 distributee or other person to whom such property is  
55 transferred, is paid to such fiduciary, or, if the  
56 apportionment of tax has not been determined, adequate  
57 security is furnished by the transferee for such payment.

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

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

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

*Gene O. Allison*  
.....  
Chairman Senate Committee

*Baron V. Kelly*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Todd C. Walters*  
.....  
Clerk of the Senate

*Donald L. Vogg*  
.....  
Clerk of the House of Delegates

*Don Torbert*  
.....  
President of the Senate

*Robert M. ...*  
.....  
Speaker House of Delegates

The within *approved* ..... this the *30th*  
*March*  
day of ..... 1988.

*Arch A. ...*  
.....  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/18/88

Time 3:58 p.m.

RECEIVED

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE