WEST VIRGINIA LEGISLATURE
Regular Session, 2002

ENROLLED
Committee Substitute for Senate Bill No. 1061

(By Senator Pass, et al)

PASSED March 9, 2002

In Effect 90 days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 661

(SENATORS ROSS, MITCHELL, SHARPE AND ROWE, original sponsors)

[Passed March 9, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact sections two and seven, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section fourteen, article one, chapter forty-four of said code, all relating to estate taxes; phasing out state estate tax in accordance with the provisions of the federal estate tax; providing that nonprobate inventory form be submitted to the tax commissioner by clerk of county commission, together with appraisal form; providing that nonprobate inventory form shall be confidential tax information; and eliminating requirement that certain forms be mailed to heirs and beneficiaries.

Be it enacted by the Legislature of West Virginia:
That sections two and seven, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section fourteen, article one, chapter forty-four of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 11. ESTATE TAXES.


(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 or her 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: Provided, however, That for estates of decedents dying after the thirty-first day of December, two thousand one, such amount may in no event be less than the federal credit allowable by Sections 2011, 2102, and 2604 of the Internal Revenue Code, as amended by the estate, gift and generation skipping transfer tax provisions of Public Law 107-16, the

(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 chooses 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 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.

(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.

(19) State. – The term "state" means any state, territory
or possession of the United States and the District of
Columbia.

(20) Tangible personal property. – The term "tangible
personal property" means corporeal personal property
including money.

(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.

(22) Tax commissioner. – The term "tax commissioner"
means the tax commissioner of the state of West Virginia
or his or her delegate.

(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.

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

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

(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.

(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.

(29) *United States.* — The term “United States”, when used in a geographical sense, includes only the fifty states and the District of Columbia.

(30) *Value.* — The term “value” means the value of property, the value of the gross estate or the value of the taxable estate as finally determined for federal estate tax purposes under the laws of the United States relating to federal estate taxes.

c) Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relative to estate taxes, unless a different meaning is clearly required by the provisions of this article. Any reference in this article to the laws of the United States relating to federal estate taxes shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal estate taxes, as the
§11-11-7. Nonprobate inventory of estates; penalties.

(a) The personal representative of every resident decedent who owned or had an interest in any nonprobate personal property, and the personal representative of every nonresident decedent who owned or had an interest in any nonprobate personal property which is a part of the taxable estate located in West Virginia, shall, under oath, list and appraise on a nonprobate inventory form prescribed by the tax commissioner, all tangible and intangible nonprobate personal property owned by the decedent or in which the decedent had an interest, at its fair market value on the date of the decedent's death. The nonprobate personal property to be included on the nonprobate inventory form includes, but is not limited to, the following:

(1) Personalty held as joint tenants with right of survivorship with one or more third parties;

(2) Personalty payable on the death of the decedent to one or more third parties;

(3) Personalty held by the decedent as a life tenant;

(4) Insurance on the decedent's life payable to beneficiaries other than the executor or administrator of the decedent's estate;

(5) Powers of appointment;

(6) Annuities;

(7) Transfers during the decedent's life in which any beneficial interest passes by trust or otherwise to another person by reason of the death of the decedent;

(8) Revocable transfers in trust or otherwise;
(9) Taxable gifts under section 2503 of the United States Internal Revenue Code of 1986; and

(10) All other nonprobate personalty included in the federal gross estate of the decedent.

(b) For purposes of this section, "nonprobate personal property" means all property which does not pass by operation of the decedent's will or by the laws of intestate descent and distribution or is otherwise not subject to administration in a decedent's estate at common law.

(c) The personal representative shall prepare the nonprobate inventory form and file it, together with the appraisement form required by section fourteen, article one, chapter forty-four of this code for estates of decedents dying on or after the thirteenth day of July, two thousand one, with the clerk of the county commission or the fiduciary supervisor within ninety days of the date of qualification of the personal representative in this state:

Provided, That for estates of decedents dying on or after the said thirteenth day of July but before the date the amendments to this section become effective, the requirement to file the nonprobate inventory form with the clerk or supervisor shall apply only if that form has not already been filed with tax commissioner.

(d) Any personal representative who fails to comply with the provisions of this section, without reasonable cause, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than five hundred dollars.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-14. Appraisement of real estate and probate personal property of decedents; disposition of appraisement and inventory forms; and hiring of experts.
(a) The personal representative of an estate of a deceased person shall appraise the deceased's real estate and personal probate property, or any real estate or personal probate property in which the deceased person had an interest at the time of his or her death, as provided in this section.

(b) After having taken the appropriate oath, the personal representative shall, on the appraisement form prescribed by the tax commissioner, list the following items owned by the decedent or in which the decedent had an interest and the fair market value of the items at the date of the decedent's death:

(1) All probate and nonprobate real estate including, but not limited to, real estate owned by the decedent, as a joint tenant with right of survivorship with one or more parties, as a life estate, subject to a power of appointment of the decedent, or in which any beneficial interest passes by trust or otherwise to another person by reason of the death of the decedent; and

(2) All probate personal property, whether tangible or intangible, including, but not limited to, stocks and bonds, bank accounts, mortgages, notes, cash, life insurance payable to the executor or administrator of the decedent's estate and all other items of probate personal property.

(c) Any real estate or interest in real estate so appraised must be identified with particularity and description. The personal representative shall identify the source of title in the decedent and the location of the realty for purposes of real property ad valorem taxation.

(d) For purposes of this section, the term "probate personal property" means all property which passes by or under the decedent's will or by the laws of intestate descent and distribution or is otherwise subject to administration in a decedent's estate under common law.
(e) The personal representative shall complete, under oath, a questionnaire included in the appraisement form designed by the tax commissioner for the purpose of reporting to the tax commissioner whether the estate of the decedent is subject to estate tax as provided in article eleven, chapter eleven of this code and whether the decedent owned or had an interest in any nonprobate personal property.

(f) The appraisement form must be executed and signed by the personal representative. The original appraisement form and two copies thereof, together with the completed and notarized nonprobate inventory form required by section seven, article eleven, chapter eleven of this code, shall be returned to the clerk of the county commission by whom the personal representative was appointed or to the fiduciary supervisor within ninety days of the date of qualification of the personal representative. The clerk or supervisor shall inspect the appraisement form to determine whether it is in proper form. If the appraisement form is returned to a fiduciary supervisor, within ten days after being received and approved, the supervisor shall deliver the documents to the clerk of the county commission. Upon receipt of the appraisement form, the clerk of the county commission shall record it with the certificate of approval of the supervisor and mail a certified copy of the appraisement form, together with the unrecorded nonprobate inventory form, to the tax commissioner. The date of return of an appraisement form must be entered by the clerk of the county commission in his or her record of fiduciaries. The nonprobate inventory form shall be considered confidential tax return information subject to the provisions of section five-d, article ten, chapter eleven of this code and may not be disclosed by the clerk of the county commission and his or her officers and employees or former officers and employees, except to the tax commissioner as provided in this section. Nothing in this section shall be construed to hinder, abrogate, or prevent
disclosure of information as authorized in section thirty-five, article eleven of said chapter.

(g) An executed and signed appraisement form is prima facie evidence:

(1) Of the value of the property listed;

(2) That the property is subject to administration; and

(3) That the property was received by the personal representative.

(h) Any personal representative who refuses or declines, without reasonable cause, to comply with the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than five hundred dollars.

(i) Every personal representative has authority to retain the services of an expert as may be appropriate to assist and advise him or her concerning his or her duties in appraising any asset or property pursuant to the provisions of this section. An expert so retained shall be compensated a reasonable sum by the personal representative from the assets of the estate. The compensation and its reasonableness is subject to review and approval by the county commission, upon recommendation of the fiduciary supervisor.

(j) Except as specifically provided in subdivision (1), subsection (b) of this section and in section seven, article eleven, chapter eleven of this code, the personal representative is not required to list and appraise nonprobate real estate or nonprobate personal property of the decedent on the forms required in this section or section seven of said article.
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 is approved this the 3rd day of April, 2002.

Governor