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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2002

ENROLLED

Committee Substitute for
SENATE BILL NO. 661

(By Senator Pass, et al)

PASSED March 9, 2002

In Effect 90 days from **Passage**

FILED

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WEST VIRGINIA
SECRETARY OF STATE

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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.

§11-11-2. Definitions.

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

7 (b) Terms defined.

8 (1) *Alien.* – The term “alien” means a decedent who, at
9 the time of his or her death, was not domiciled in this state
10 or any other state of the United States and was not a
11 citizen of the United States.

12 (2) *Decedent or transferor.* – The terms “decedent” or
13 “transferor” are used herein interchangeably and mean a
14 deceased natural person by or from whom a transfer is
15 made; and include any testator, intestate grantor,
16 bargainor, vendor, assignor, donor, joint tenant or insured.

17 (3) *Delegate.* – The term “delegate” in the phrase “or his
18 or her delegate,” when used in reference to the tax com-
19 missioner, means any officer or employee of the state tax
20 department duly authorized by the tax commissioner
21 directly, or indirectly by one or more redelegations of
22 authority, to perform the function or functions mentioned
23 or described in the context.

24 (4) *Estate or property.* – The terms “estate” or “prop-
25 erty” mean the real or personal property or interest therein
26 of a decedent or transferor and includes all the following:

27 (A) All intangible personal property of a resident dece-
28 dent within or without this state or subject to the jurisdic-
29 tion of this state.

30 (B) All intangible personal property in this state belong-
31 ing to a deceased nonresident of the United States, includ-
32 ing all stock of a corporation organized under the laws of
33 this state, or which has its principal place of business or
34 does the major part of its business in this state, or of a
35 federal corporation or national bank which has its princi-
36 pal place of business or does the major part of its business
37 in this state, excluding, however, savings accounts and
38 savings and loan associations operating under the author-
39 ity of the state banking commissioner or the federal home
40 loan bank board, and bank deposits, unless those deposits
41 are held and used in connection with a business conducted
42 or operated, in whole or in part, in this state.

43 (5) *Federal credit.* – The term “federal credit” means the
44 maximum amount of the credit for state death taxes
45 allowable by Section 2011, credit against federal estate tax
46 (or Section 2102 in the case of an alien) and Section 2602,
47 credit against the federal tax on generation-skipping
48 transfers of the United States Internal Revenue Code of
49 1954, as amended or renumbered, or in successor provi-
50 sions of the laws of the United States, in respect to a
51 decedent’s taxable estate. The term “maximum amount”
52 shall be construed so as to take full advantage of such
53 credit as the laws of the United States may allow: *Pro-*
54 *vided,* That in no event shall such amount be less than the
55 federal credit allowable by Sections 2011, 2102 and 2602
56 of the Internal Revenue Code, as it existed on January one,
57 one thousand nine hundred eighty-five: *Provided, how-*
58 *ever,* That for estates of decedents dying after the thirty-
59 first day of December, two thousand one, such amount
60 may in no event be less than the federal credit allowable
61 by Sections 2011, 2102, and 2604 of the Internal Revenue
62 Code, as amended by the estate, gift and generation -
63 skipping transfer tax provisions of Public Law 107-16, the

64 Economic Growth and Tax Relief Reconciliation Act of
65 2001.

66 (6) *Gross estate.* – The term “gross estate” means the
67 gross estate of the decedent as defined in Section 2031 (or
68 Section 2103 in the case of an alien) of the United States
69 Internal Revenue Code of 1954, as amended or renum-
70 bered, or in successor provisions of the laws of the United
71 States.

72 (7) *Includes and including.* – The words “includes” and
73 “including” when used in a definition contained in this
74 article shall not be deemed to exclude other things other-
75 wise within the meaning of the term being defined.

76 (8) *Intangible personal property.* – The term “intangible
77 personal property” means incorporeal personal property
78 including deposits in banks, negotiable instruments,
79 mortgages, debts, receivables, shares of stock, bonds,
80 notes, credits, evidences of an interest in personal prop-
81 erty, evidences of debt and chooses in action generally.

82 (9) *Internal revenue code.* – The term “Internal Revenue
83 Code” means the United States Internal Revenue Code of
84 1954, as amended and in effect on the first day of January,
85 one thousand nine hundred eighty-five, including all
86 changes to such code enacted subsequent to such date, that
87 are similar to or a replacement of the section cited or
88 referred to.

89 (10) *Net estate.* – The term “net estate” means the net
90 estate of the decedent as defined in Section 2051 of the
91 United States Internal Revenue Code of 1954, as amended
92 or renumbered, or in successor provisions of the laws of
93 the United States.

94 (11) *Nonresident.* – The term “nonresident” means a
95 decedent who was a citizen of the United States, but was
96 domiciled outside the state of West Virginia at the time of
97 his or her death.

98 (12) *Notice.* – The term “notice” means a written notice
99 sent to the last known address of the addressee and shall
100 be effective upon mailing.

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

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

109 (15) *Person required to file.* – The phrase “person
110 required to file” means any person, including a personal
111 representative, qualified heir, distributee or trustee
112 required or permitted to file a federal estate tax return, or
113 a West Virginia estate tax return, pursuant to the provi-
114 sions of the Internal Revenue Code or this article.

115 (16) *Personal representative.* – The terms “personal
116 representative” and “fiduciary” are used interchangeably
117 and mean:

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

121 (B) If there is no personal representative appointed,
122 qualified and acting within this state, then any person in
123 actual or constructive possession of the West Virginia
124 gross estate of the decedent. The term “personal represen-
125 tative” includes the executor of a will, the administrator
126 of the estate of a deceased person, the administrator of
127 such estate with the will annexed, the administrator de
128 bonis non of such estate, whether there be a will or not, the
129 sheriff or other officer lawfully charged with the adminis-
130 tration of the estate of a deceased person, and every other
131 curator or committee of a decedent’s estate for or against

132 whom suits may be brought for causes of action which
133 accrued to or against such decedent.

134 (17) *Real property situated in this state.* – The phrase
135 “real property situated in this state” means any and all
136 interests in real property located in this state, including
137 leasehold interests, royalty interests, production payments
138 and working interests in coal, oil, gas and other natural
139 resources.

140 (18) *Resident.* – The term “resident” means a decedent
141 who was domiciled in the state of West Virginia at the
142 time of his or her death.

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

146 (20) *Tangible personal property.* – The term “tangible
147 personal property” means corporeal personal property
148 including money.

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

153 (22) *Tax commissioner.* – The term “tax commissioner”
154 means the tax commissioner of the state of West Virginia
155 or his or her delegate.

156 (23) *Taxable estate.* – The term “taxable estate” means
157 the taxable estate of the decedent as defined in Section
158 2051 (or Section 2106 in the case of an alien) of the United
159 States Internal Revenue Code of 1954, as amended or
160 renumbered, or in successor provisions of the laws of the
161 United States.

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

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

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

171 (27) *Transfer*. – The term “transfer” means “transfer” as
172 defined in Sections 2001, 2101, 2601 of the United States
173 Internal Revenue Code of 1954, as amended or renum-
174 bered, or in successor provisions of the laws of the United
175 States. It includes the passage of any property, or any
176 interest therein, or income therefrom, in possession or
177 enjoyment, present or future, in trust or otherwise,
178 whether by inheritance, descent, devise, succession,
179 bequest, grant, deed, bargain, sale, gift or appointment.

180 (28) *Transferee*. – The term “transferee” means any
181 person to whom a transfer is made and includes any
182 legatee, devisee, heir, next of kin, grantee, donee, vendee,
183 assignee, successor, survivor or beneficiary.

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

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

192 (c) Any term used in this article shall have the same
193 meaning as when used in a comparable context in the laws
194 of the United States relative to estate taxes, unless a
195 different meaning is clearly required by the provisions of
196 this article. Any reference in this article to the laws of the
197 United States relating to federal estate taxes shall mean
198 the provisions of the Internal Revenue Code of 1954, and
199 amendments thereto, and other provisions of the laws of
200 the United States relating to federal estate taxes, as the

201 same may be or become effective at any time or from time
202 to time.

§11-11-7. Nonprobate inventory of estates; penalties.

1 (a) The personal representative of every resident dece-
2 dent who owned or had an interest in any nonprobate
3 personal property, and the personal representative of every
4 nonresident decedent who owned or had an interest in any
5 nonprobate personal property which is a part of the
6 taxable estate located in West Virginia, shall, under oath,
7 list and appraise on a nonprobate inventory form pre-
8 scribed by the tax commissioner, all tangible and intangi-
9 ble nonprobate personal property owned by the decedent
10 or in which the decedent had an interest, at its fair market
11 value on the date of the decedent's death. The nonprobate
12 personal property to be included on the nonprobate
13 inventory form includes, but is not limited to, the follow-
14 ing:

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

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

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

20 (4) Insurance on the decedent's life payable to beneficia-
21 ries other than the executor or administrator of the dece-
22 dent's estate;

23 (5) Powers of appointment;

24 (6) Annuities;

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

28 (8) Revocable transfers in trust or otherwise;

29 (9) Taxable gifts under section 2503 of the United States
30 Internal Revenue Code of 1986; and

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

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

38 (c) The personal representative shall prepare the
39 nonprobate inventory form and file it, together with the
40 appraisement form required by section fourteen, article
41 one, chapter forty-four of this code for estates of decedents
42 dying on or after the thirteenth day of July, two thousand
43 one, with the clerk of the county commission or the
44 fiduciary supervisor within ninety days of the date of
45 qualification of the personal representative in this state:
46 *Provided*, That for estates of decedents dying on or after
47 the said thirteenth day of July but before the date the
48 amendments to this section become effective, the require-
49 ment to file the nonprobate inventory form with the clerk
50 or supervisor shall apply only if that form has not already
51 been filed with tax commissioner.

52 (d) Any personal representative who fails to comply with
53 the provisions of this section, without reasonable cause, is
54 guilty of a misdemeanor and, upon conviction thereof,
55 shall be fined not less than twenty-five dollars nor more
56 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.**

1 (a) The personal representative of an estate of a deceased
2 person shall appraise the deceased's real estate and
3 personal probate property, or any real estate or personal
4 probate property in which the deceased person had an
5 interest at the time of his or her death, as provided in this
6 section.

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

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

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

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

30 (d) For purposes of this section, the term "probate
31 personal property" means all property which passes by or
32 under the decedent's will or by the laws of intestate
33 descent and distribution or is otherwise subject to admin-
34 istration in a decedent's estate under common law.

35 (e) The personal representative shall complete, under
36 oath, a questionnaire included in the appraisal form
37 designed by the tax commissioner for the purpose of
38 reporting to the tax commissioner whether the estate of
39 the decedent is subject to estate tax as provided in article
40 eleven, chapter eleven of this code and whether the
41 decedent owned or had an interest in any nonprobate
42 personal property.

43 (f) The appraisal form must be executed and signed
44 by the personal representative. The original appraisal
45 form and two copies thereof, together with the completed
46 and notarized nonprobate inventory form required by
47 section seven, article eleven, chapter eleven of this code,
48 shall be returned to the clerk of the county commission by
49 whom the personal representative was appointed or to the
50 fiduciary supervisor within ninety days of the date of
51 qualification of the personal representative. The clerk or
52 supervisor shall inspect the appraisal form to deter-
53 mine whether it is in proper form. If the appraisal
54 form is returned to a fiduciary supervisor, within ten days
55 after being received and approved, the supervisor shall
56 deliver the documents to the clerk of the county commis-
57 sion. Upon receipt of the appraisal form, the clerk of
58 the county commission shall record it with the certificate
59 of approval of the supervisor and mail a certified copy of
60 the appraisal form, together with the unrecorded
61 nonprobate inventory form, to the tax commissioner. The
62 date of return of an appraisal form must be entered by
63 the clerk of the county commission in his or her record of
64 fiduciaries. The nonprobate inventory form shall be
65 considered confidential tax return information subject to
66 the provisions of section five-d, article ten, chapter eleven
67 of this code and may not be disclosed by the clerk of the
68 county commission and his or her officers and employees
69 or former officers and employees, except to the tax
70 commissioner as provided in this section. Nothing in this
71 section shall be construed to hinder, abrogate, or prevent

72 disclosure of information as authorized in section thirty-
73 five, article eleven of said chapter.

74 (g) An executed and signed appraisal form is prima
75 facie evidence:

76 (1) Of the value of the property listed;

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

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

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

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

95 (j) Except as specifically provided in subdivision (1),
96 subsection (b) of this section and in section seven, article
97 eleven, chapter eleven of this code, the personal represen-
98 tative is not required to list and appraise nonprobate real
99 estate or nonprobate personal property of the decedent on
100 the forms required in this section or section seven of said
101 article.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within is approved this the 3rd
Day of April, 2002.

[Signature]
.....
Governor

PROCESSED BY

CLASSIFIED

DATE

3/26/02

BY

3/25/02