

# MAINE STATE LEGISLATURE

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EIGHTY - SIXTH LEGISLATURE

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Legislative Document

No. 15

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H. P. 22

House of Representatives, Jan. 11, 1933.

Referred to Committee on Judiciary and 500 copies ordered printed. Sent up for concurrence.

HARVEY R. PEASE, Clerk.

Presented by Mr. Tompkins of Houlton.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD ONE THOUSAND NINE  
HUNDRED AND THIRTY-THREE

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AN ACT relative to Inheritance and Estate Tax Laws.

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Be it enacted by the people of the State of Maine as follows:

Section 1. **Attorney General to enforce and administer inheritance and succession laws.** The assessment and collection of all taxes on inheritances and successions and of all estate taxes and the enforcement and administration of all the provisions of law relating thereto shall be vested in the attorney general who shall commission one of his assistant attorneys general as inheritance tax commissioner, hereinafter referred to as the commissioner.

In the absence or disability of the commissioner the attorney general or his deputy may designate an acting commissioner who shall be vested with all the powers of and shall perform all the duties of, the commissioner during such absence or disability.

**Property taxable**

Sec. 2. **Property taxable.** The following property shall be subject to an inheritance tax for the use of the state:

(a) All property within the jurisdiction of this state and any interest therein belonging to inhabitants of this state and all real estate or any interest therein and all tangible personal property within the state belonging to persons who are not inhabitants of this state which shall pass:

1. By will, by laws regulating intestate succession or by allowance of a judge of probate,

2. By deed, grant, sale or gift except in case of a bona fide purchase for full consideration in money or money's worth, made in contemplation of the death of the grantor or donor, or made or intended to take effect in possession or enjoyment after the death of the grantor or donor to any person in trust or otherwise,

3. By survivorship in any form of joint ownership including joint bank deposits in which the decedent joint owner contributed during his lifetime any part of the property held in such joint ownership or of the purchase price thereof,

(b) All proceeds of life insurance policies upon the life of a decedent payable to his estate or to his executors or administrators except, if testate, such part thereof as is bequeathed to a widow, or widower, or issue, or, if intestate, such part thereof as descends under the provisions of section 21 of chapter 89 of the revised statutes.

Excepting from all of the foregoing any property which shall pass to or for the use of any charitable, educational, religious or benevolent institution in this state, or to or for the use of this state or of any county, town or municipal subdivision therein for public purposes.

Sec. 3. **Amount of tax on class A.** Property which shall so pass to or for the use of the following persons who shall be designated as Class A, to wit: husband, wife, lineal ancestor, lineal descendant, adopted child, adoptive parent, wife or widow of a son or husband or widower of a daughter of a decedent, shall be subject to a tax upon the value thereof, in excess of the exemption hereinafter provided, of 1% of such value in excess of said exemption as does not exceed \$50,000, of 1½% of such value as exceeds said \$50,000 and does not exceed \$100,000, of 2% of such value as exceeds \$100,000 and does not exceed \$250,000, and of 3% of such value as exceeds \$250,000; the value exempt from taxation to or for the use of a husband, wife, father, mother, child, adopted child, or adoptive parent, shall in each case be \$10,000, and the value exempt from taxation to or for the use of any other person falling within said Class A, shall in each case be \$500.

Sec. 4. **Amount of tax on class B.** Property which shall

so pass to or for the use of the following persons who shall be designated as Class B, to wit: brother, half brother, sister, half sister, uncle, aunt, nephew, niece, grand nephew, grand niece, or cousin of a decedent, shall be subject to a tax upon the value thereof, in excess of an exemption of \$500, of 4% of such value in excess of said exemption as does not exceed \$50,000, of 4½% of such value as exceeds \$50,000 and does not exceed \$100,000, of 5% of such value as exceeds \$100,000 and does not exceed \$250,000, and of 6% of such value as exceeds \$250,000.

**Sec. 5. Amount of tax on class C.** Property which shall so pass to or for the use of any person not falling within either of the classes hereinbefore set forth shall be subject to a tax upon the value thereof, in excess of an exemption of \$500, of 5% of such value in excess of said exemption as does not exceed \$50,000, of 6% of such value as exceeds \$50,000 and does not exceed \$100,000, of 7% of such value as exceeds \$100,000 and does not exceed \$250,000, and of 8% of such value as exceeds \$250,000.

**Sec. 6. All property to be treated as a single interest.** All property and interests therein which shall pass from a decedent to the same beneficiary by any one or more of the methods hereinbefore specified and all beneficial interests which shall accrue in the manner hereinbefore provided to such beneficiary on account of the death of such decedent shall be united and treated as a single interest for the purpose of determining the tax hereunder.

**Sec. 7. Value of exempted property.** In non-resident estates the value of the property exempt from taxation under the provisions of the foregoing sections shall be only such proportion of the whole exempted amount as the estate of the non-resident taxable in this state bears to the total estate wherever situated.

**Sec. 8. Taxation of bequests to executors or trustees.** Whenever a testator gives, bequeaths, or devises to his executors or trustees any property otherwise liable to the tax imposed by this act in lieu of their compensation, the value thereof in excess of reasonable compensation, as determined by the probate court having jurisdiction of their accounts, shall be subject to the tax imposed by this act.

Sec. 9. **Taxation of deeds, etc. inter vivos.** Any deed, grant or gift completed inter vivos, except in cases of bona fide purchase for full consideration in money or money's worth, made not more than six months prior to the death of the grantor or donor, shall prima facie, be deemed to have been made in contemplation of the death of the grantor or donor. Notwithstanding any provision of section 2, no deed, grant or gift made more than 2 years prior to the death of the grantor or donor, shall be subject to a tax hereunder unless made or intended to take effect in possession or enjoyment after the death of the grantor or donor.

#### Value for Taxation

Sec. 10. **Tax on value as of testator's death.** Except as otherwise provided in section 13 the tax imposed by this act shall be assessed on the value of the property at the time of the death of the decedent.

Sec. 11. **Value of estates in remainder, how computed.** When any interest in property less than an estate in fee is devised or bequeathed to one or more beneficiaries with remainder to others or is created by gift or grant and the interest of one or more beneficiaries is subject to said tax, the value of the prior estate shall be determined by the Actuaries' Combined Experience Tables at 4% compound interest and a tax imposed at the rate or rates prescribed in sections 3, 4, and 5 for the class to which the devisee, legatee, donee or grantee of such estate belongs, and a tax shall be imposed at the same time upon the remaining value of such property at the rate or rates prescribed in said sections for the class to which the devisee, legatee, donee or grantee of such remainder belongs.

Sec. 12. **Settlement may be effected when computation is impossible.** In case it is impossible to compute the present value of any interest, the commissioner may, with the approval of the attorney general, effect such settlement of the tax as he shall deem for the best interest of the state and payment of the sum so agreed upon shall be full satisfaction of such tax. Executors, administrators and trustees are hereby authorized and empowered to compromise the amount of tax with the commissioner.

Sec. 13. **Proceedings when settlement cannot be effected.** In case it is impossible to compute the present value of any interest, and the tax thereon is not compromised as provided in section 12, said tax shall be assessed on the value of the property or interest therein coming to the beneficiary at the time when he becomes entitled to the same in possession or enjoyment and said tax shall be due and payable, by the executor, administrator or trustee in office when the right of possession to such interest accrues, or, if there is no such executor, administrator or trustee, by the person so entitled thereto at the expiration of 6 months from the date when the right of possession accrued to the person so entitled.

In every such case the executor, administrator, trustee or grantee or any person interested in the devise, bequest or grant shall give to the judge of the probate court having jurisdiction of the estate of the decedent a bond payable to him or his successor, sufficient to secure the payment of all taxes which may become due and interest thereon conditioned in substance that he will notify the commissioner when said taxes become due and payable and will pay the same with interest to the state.

Sec. 14. **Executor, etc., shall deduct tax before delivering property.** An executor, administrator or trustee holding property subject to the tax imposed by this act shall deduct the tax therefrom or collect it from the legatee or person entitled to said property; and he shall not deliver property or a specific legacy subject to said tax until he has collected the tax thereon. An executor or administrator shall collect inheritance taxes due upon real property passing by inheritance or will which is subject to said tax from the heirs or devisees entitled thereto, and he may be authorized to sell said real property in the manner prescribed by section 24 if they refuse or neglect to pay said tax. An executor, administrator or trustee upon payment of any tax assessed under the provisions of section 11 or compromised under the provisions of section 12 shall, unless otherwise provided in the instrument creating the taxable interests, deduct the tax so paid from the whole property devised, bequeathed or given.

#### **Tax Payable**

Sec. 15. **When tax is payable.** Except as otherwise pro-

vided in section 13, the tax imposed by this act shall be payable to the commissioner by the executor, administrator or trustee at the expiration of 15 months from the date of death of the decedent, but if legacies or distributive shares are paid within said period, the tax thereon shall be paid at the same time; provided however that the commissioner may for cause extend the time of payment.

Sec. 16. **Interest charges on unpaid taxes.** If taxes imposed by this act are not paid when due, interest at the rate of 10% per annum shall be charged and collected thereon from the time the same became due.

### Lien

Sec. 17. **Property upon which taxes are unpaid charged with a lien.** Property of which a decedent dies seized or possessed, subject to taxes as aforesaid, in whatever form of investment it may happen to be, and all property acquired in substitution therefor, shall be charged with a lien for all taxes and interest thereon which are or may become due on such property; but said lien shall not attach to any personal property after the same has been sold or disposed of for value by the executor, administrator or trustee, or to real estate after it has been conveyed by the executor, administrator or trustee under license of the probate court. The lien charged by this act upon any real estate or separate parcel thereof may be discharged by the payment of all taxes and interest due and to become due upon said real estate or separate parcel and the cost of recording the certificate hereinafter mentioned, and upon the payment thereof the commissioner shall cause a certificate showing such payment to be recorded in the registry of deeds in each county where said real estate is located.

### Payment

Sec. 18. **Administrators, etc., are liable for unpaid taxes.** Administrators, executors, trustees, or grantees or donees under conveyances or gifts made during the life of the grantor or donor, and persons to whom beneficial interests shall accrue by survivorship shall be liable for the taxes imposed by this act, with interest, as hereinbefore provided, until the same have been paid.

Sec. 19. **Provisions if legacy is payable out of realty.** If a legacy subject to said tax is charged upon or payable out of real estate, the heir or devisee, before paying said legacy, shall deduct said tax therefrom and pay it to the executor, administrator or trustee, and the tax on said legacy shall remain a lien upon said real estate until it is paid. Payment thereof from the heir or devisee may be enforced by the executor, administrator or trustee in the same manner as the payment of the legacy itself could be enforced.

Sec. 20. **State may have action of debt against administrator, etc.; bond required.** An action of debt may be maintained in the name of the state against an administrator, executor, trustee, grantee or donee for the recovery of all taxes imposed by this act with interest thereon. Administrators and executors shall be liable to the state on their administration bonds for all taxes assessable under the provisions of this act and interest thereon. Whenever an administration bond is waived by testamentary provision or by the assent of interested parties, the judge of probate, notwithstanding such waiver, before granting letters testamentary or of administration shall require a bond payable to him or his successor sufficient to secure the payment of all inheritance taxes and interest conditioned in substance to pay all inheritance and estate taxes due to the state from the estate of the deceased with interest thereon. An action for the recovery of inheritance and estate taxes and interest shall lie on either of said bonds without the authority of the judge of probate.

Sec. 21. **Administrator must be appointed within 6 months.** If, upon the decease of a person leaving an estate which may be liable to pay an inheritance tax, a will is not offered for probate, or an application for administration is not made within 6 months after the date of death, the probate court upon application by the commissioner, shall appoint an administrator.

Sec. 22. **No tax on amounts willed to pay the tax.** When provision is made by will for the payment of any tax upon a bequest or devise out of any property other than that so given, no tax shall be chargeable upon the sum to be applied in payment of the tax.



Sec. 23. **Refund of taxes paid.** Whenever a devisee, legatee, or heir refunds any portion of the property on which a tax has been paid by him or it is judicially determined that the whole or any part of such tax ought not to have been paid, said tax, or the due proportional part thereof, shall be refunded to him by the executor, administrator or trustee.

Sec. 24. **Sale of realty to pay taxes authorized.** The probate court may authorize executors, administrators and trustees to sell the real estate of the deceased for the payment of the tax in the same manner as it may authorize the sale of real estate for the payment of debts.

### Appraisal and Valuation

Sec. 25. **Inventory of estate to be filed.** Every executor, administrator or trustee shall within three months of the date of his appointment in addition to the inventory returned into the probate court, file with the commissioner on blanks to be furnished by the commissioner, an inventory upon oath containing a complete list of all the property of the estate or trust within his knowledge except that the commissioner may, for cause, extend the time for filing said inventory. If he neglects or refuses to file said inventory, he shall be liable to a penalty of not more than \$500, and on complaint of the commissioner, the judge of probate may remove him from his said trust.

Sec. 26. **Accounts not to be allowed unless tax is paid; exceptions.** Except as otherwise provided no account of an executor, administrator or trustee showing any payment except debts, funeral expenses, expenses of administration and legacies or distributive shares wholly exempt from inheritance taxes shall be allowed by the probate court unless with the consent of the commissioner or unless such account shows, and the judge of said court finds, that all inheritance taxes already payable have been paid, and that all taxes which may become due have been secured as hereinbefore provided. The certificate of the commissioner and his receipt for the amount of the tax therein certified shall be conclusive as to the payment of the tax, to the extent of said certification.

The fact that an estate may later become subject to a tax shall not prevent the allowance of an account if a bond has been given as provided in section 13.

Sec. 27. **Commissioner to determine value of property; appeal.** The value of the property upon which the tax is computed shall be determined by the commissioner and certified by him to the persons by whom the tax is payable, and such determination shall be final unless the value so determined shall be reduced by proceedings as hereinafter provided. At any time within 90 days after such certification any party interested in the succession, or the executor, administrator, or trustee, may appeal from the decision of the commissioner to the probate court in the county where the estate is being administered as provided in section 31.

At any time within said 90 days the commissioner may at the request or with the consent of the persons by whom the tax is payable, alter his determination of value. When an alteration is made, the commissioner shall notify the persons by whom the tax is payable and the appeal may be taken within 90 days thereafter.

Sec. 28. **Commissioner to determine amount of tax; procedure.** The commissioner shall determine the amount of tax due and payable upon any estate or part thereof and shall certify the amount so due and payable to the persons by whom the tax is payable. Such determination and certification may be made upon account of the tax payable upon the estate generally or upon account or in full for any part thereof or any interest therein. Payment of the amount so certified upon account shall be a discharge of the tax to the extent of said certification and upon subsequent determination and certification of the full amount of the tax payable upon the estate generally or upon any interest therein or part thereof, payment of the full amount of said tax shall, except as hereinafter provided, be a discharge of the tax. In determining the amount of any tax under this act, the commissioner shall not be required to consider any payments on account of debts, funeral expenses or expenses of administration which have not been allowed by the probate court having jurisdiction of said estate. If after determination and certification of the full amount of the tax upon an estate or any interest therein or part thereof the estate shall receive or become entitled to property in addition to that shown in the inventory or disclosed to the commissioner, the executor, administrator, trustee or other fiduciary shall forthwith notify the commissioner who shall

upon being thus or otherwise informed determine the amount of additional tax, if any, due and payable thereon and shall certify the said amount to the person by whom such tax is payable, which amount shall be due and payable thirty days from the date of the certification; provided, that a fiduciary shall be personally liable to pay only so much of said additional tax as is computed on the additional property actually received by him and that a beneficiary receiving any part of such additional property shall be liable to pay so much of the tax thereon as is not chargeable as aforesaid to a fiduciary.

Sec. 29. **Procedure if information is withheld.** Whenever an executor, administrator, trustee, or any person liable to taxation under this act refuses or neglects to furnish to the commissioner any information which in the opinion of the commissioner is necessary to the proper computation of taxes payable by such executor, administrator, trustee or person, after having been requested so to do, the commissioner shall certify such taxes at the highest rate at which they could in any event be computed.

Sec. 30. **Registers of probate to send reports of appointments of administrators, etc. to commissioner; penalty.** The registers of probate in the several counties, shall send to the commissioner on forms to be prescribed and furnished by him, a record of every appointment of an executor, administrator or trustee made in his court, immediately following any such appointment, and for failure to make any such report any register of probate shall be liable to a penalty of not more than \$50.

Sec. 31. **Petition for abatement.** An executor, administrator, trustee, grantee, donee, survivor or beneficiary aggrieved by the determination of the commissioner may within ninety days after the certification of any tax apply by a petition in equity to the probate court in the county where the estate is being administered for the abatement of the tax determined or any part thereof and if the court adjudges that the tax or any part thereof was wrongly determined, it shall order an abatement of such part thereof as was determined without authority of law. Questions of law may be reported by the probate court to the supreme judicial court sitting as a court of law. Upon a final decision ordering an abatement

of any part of a tax determined, the determination of the commissioner shall be amended in accordance with the decree of the court.

**Sec. 32. Inspection of documents filed with commissioner.** Papers, copies of papers, affidavits, statements, letters and other information and evidence filed with the commissioner in connection with the assessment of taxes upon legacies and successions shall be open only to the inspection of persons charged or likely to become charged with the payment of taxes in the case in which such paper, copy, affidavit, statement, letter or other information or evidence is filed, or their representatives, and to the commissioner, his deputies, assistants and clerks and such other officers and persons as may, in the performance of their duties, have occasion to inspect the same for the purpose of assessing or collecting taxes.

**Sec. 33. Commissioner to prepare forms, and make rules of procedure.** The commissioner shall prepare all blanks, forms, books and papers necessary for or incident to the securing of full information with reference to all estates and may prescribe and establish such rules of practice and procedure, not inconsistent with law, as may be desirable in the economical and efficient administration of this act.

**Sec. 34. Commissioner may examine witness; attendance compelled.** The commissioner may summon and examine on oath, for the purpose of determining the taxability of any estate or of determining the value of such estate or assessing taxes thereon, any person having knowledge or means of knowledge as to any material fact touching the nature, valuation or taxation of any property which may be subject to the provisions of this act, and may require the production of all books, papers or other documents within the control of any witness.

Any examination on oath conducted by the commissioner may in his discretion be reduced to writing and false swearing therein shall be deemed perjury and be punishable as such.

Any justice of the superior court upon application of the commissioner may compel the attendance of witnesses and the giving of testimony before the commissioner in the same manner, to the same extent and subject to the same penalties as if before said court.

Sec. 35. **Authority of commissioner.** The commissioner shall collect all taxes, interest and penalties provided by this act and is hereby given authority to institute proceedings of any nature necessary or desirable for that purpose, including such proceedings as may be necessary or desirable for the removal of executors, administrators and trustees who have failed to pay the taxes due from estates in their hands.

The commissioner is hereby given authority to enforce the collection of any taxes secured by bond in an action of debt brought thereon regardless of the fact that some other official may be named as obligee therein.

#### **Estate taxes**

Sec. 36. **Estate taxes, how imposed.** There shall be assessed by the commissioner, in addition to the inheritance tax hereinbefore provided, an estate tax upon all estates which are subject to taxation under the federal revenue act of 1926 as heretofore amended. Said tax is hereby imposed upon the transfer of the estate of every person, who at the time of his death was a resident of this state. The amount of said tax shall be the amount by which 80% of the estate tax payable to the United States under the provisions of said federal revenue act shall exceed the aggregate amount of all estate, inheritance, legacy, and succession taxes actually paid to the several states of the United States in respect to any property owned by such decedent, or subject to such taxes as a part of or in connection with his estate.

Said tax is hereby imposed also upon the transfer of all real property or tangible personal property situate within the state and passing by reason of the death of a person who was not a resident of this state at the time of his death. The amount of said tax shall be the amount by which 80% of the estate tax payable to the United States by reason of the transfer of such property exceeds the aggregate of the taxes payable thereon under the provisions of sections 3, 4 and 5 of this act.

Sec. 37. **When payable.** Said estate tax shall become payable at the expiration of fifteen months from the date of death of the decedent, and executors, administrators, trustees, grantees, donees, beneficiaries and surviving joint owners shall be, and remain liable for the tax until it is paid. If the tax is not paid when due, interest at the rate of ten per cent per an-

num shall be charged and collected from the time the same became due. The commissioner may, for cause, extend the time of payment.

Sec. 38. **Intent of §§ 36-40, inclusive.** The intent and purpose of sections 36 to 40 inclusive imposing an estate tax is to obtain for this state the benefit of the credit allowed under the provisions of Title III, section 301, sub-section (b) of the federal revenue act of 1926 to the extent that this state may be entitled by the provisions of sections 30 to 40 inclusive, by imposing an additional tax, and the same shall be liberally construed to effect this purpose. The commissioner may make such regulations relative to the assessment and the collection of the tax provided by said sections, not inconsistent with law, as may be necessary to carry out this intent.

Sec. 39. **Exceptions.** The foregoing provisions shall become void and of no effect in respect to the estates of persons who die subsequent to the effective date of the repeal of Title III of said federal revenue act or of the provisions thereof providing for a credit of the taxes paid to the several states of the United States not exceeding 80% of the tax imposed by said Title III. If any portion of the foregoing provisions relating to said estate tax is held unconstitutional such decision shall not invalidate the portions unaffected thereby. In the event that any part of the federal revenue act or federal estate tax law, hereinbefore referred to, shall be declared to be in violation of the constitution of the United States, such declaration shall not be construed to affect the foregoing provisions relating to estate tax.

Sec. 40. **Inheritance tax law apply to estate tax law.** All provisions of this act, relating to inheritance taxes, shall apply to the sections relating to estate taxes wherever the same are applicable.

Sec. 41. **Definitions.** Wherever used in this act the word "person" shall include bodies corporate; the word "property" shall include both real and personal estate, and any form of interest therein whatsoever, including annuities.

Sec. 42. **Limitations.** This act, in so far as it changes the rate of tax applicable to property or interests therein, shall apply only to such property or interests therein passing on or

after the 1st day of July, 1933 and, as to all property and interests therein passing prior to said date, the rate or rates now applicable under the provisions of chapter 77 of the revised statutes shall remain in force. Notwithstanding the rate of taxation applicable in any given case, all proceedings incident to the payment and collection of inheritance and estate taxes after this act shall take effect, shall be conducted under the terms hereof and full jurisdiction shall be vested in the commissioner rather than in the probate courts of the several counties of the state.

Sec. 43. **Repealing clause.** Chapter 77 of the revised statutes is hereby repealed to take effect on the 1st day of July, 1933 when, in accordance with the terms of section 42, the new rates of taxation applicable to inheritance and estate taxes take effect under the terms of this act; provided, however, that the taxes imposed by said chapter 77 of the revised statutes shall notwithstanding such repeal apply to all property or interests therein passing prior to that date and provided further that the provisions creating liens in favor of the state, requiring the payment of interest to the state and all other provisions intended for the protection of the state in the collection of such taxes shall continue to remain in force until all taxes due under said chapter 77 have been paid in full.