

MAINE STATE LEGISLATURE

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DECEMBER SPECIAL SESSION

E I G H T Y - S I X T H L E G I S L A T U R E

Legislative Document

No. 152

H. P. 122

House of Representatives, Dec. 8, 1933.

Referred to committee on Judiciary and 1,000 copies ordered printed.
Sent up for concurrence.

HARVEY R. PEASE, Clerk.

Presented by Miss Laughlin of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND
THIRTY-THREE

AN ACT Relative to Inheritance and Estate Taxes

Be it enacted by the People of the State of Maine, as follows:

Property Taxable

Sec. 1. 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 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. 2. 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. 3. 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, grandnephew, grandniece, 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. 4. 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. 5. 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 1 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. 6. 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. 7. 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. 8. 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 6 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 1, 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. 9. Tax on value as of testator's death. Except as otherwise provided in section 12 the tax imposed by this act shall be assessed on the fair market value of the property at the time of the death of the decedent.

Sec. 10. Value of estates in remainder, how computed. When any interest in property less than an astate in fee is devised or bequeathed to 1 or more beneficiaries with remainder to others or is created by gift or grant and the interest of 1 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 2, 3, and 4 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. 11. Settlement may be effected when computation is impossible. In case it is impossible to compute the present value of any interest, the attorney-general may 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 attorney-general.

Sec. 12. 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 11, 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 attorney-general when said taxes become due and payable and will pay the same with interest to the state.

Sec. 13. 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 22 in they refuse or neglect to pay said tax. An executor, administrator or trustee upon payment of any tax assessed under the provisions of section 10 or compromised under the provisions of section 11 shall, unless otherwise provided in the instrument creating the taxable interests, deduct the tax so paid from the whole property devised, bequeathed or given.

Lien

Sec. 14. 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, except as hereinafter provided, 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 attorney-general shall cause a certificate showing such payment to be recorded in the registry of deeds in each county where the real estate is located.

Payment

Sec. 15. Administrators, etc., are liable for unpaid taxes. Administrators, executors, trustees, or grantees or donees under conveyances of gifts made during the life of the grantor or donor, and persons to whom beneficial interests shall accrue by survivorship shall be liable respectively for the taxes imposed by this act, with interest, as hereinbefore provided, until the same have been paid.

Sec. 16. 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. 17. 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 upon their administration bonds for all taxes assessable under the provisions of this act, and interest thereon. Whenever an administration bond is waived by a testamentary provision or by the assent of interested parties, the judge of probate, notwithstanding such waiver, before granting letters testamentary or of administration, may, and if in his judgment the amount of any bequest or distributive share of the estate may be subject to a tax as hereinbefore

provided, shall require a bond payable to him or to his successor, sufficient to secure the payment of and 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. 18. Proceedings for recovery of taxes by attorney-general. The attorney-general shall promptly commence proceedings for the recovery of any of said taxes within 6 months after the same become payable; and shall commence the same when the judge of probate certifies to him that the final account of an executor, administrator or trustee has been filed in such court and that the settlement of the estate is delayed because of the non-payment of said tax. The judge of probate shall so certify upon the application of any heir, legatee or other person interested therein, and may extend the time of payment of said tax when the circumstances of the case require, and no action or process of any nature shall be commenced or maintained in any court for the assessment, determination or for the recovery of any of said taxes after the expiration of 20 years from the death of any person in connection with whose estate such tax may or shall have accrued. All moneys received by the attorney-general as taxes collected under the provisions of this act shall be by him forthwith paid to the treasurer of state.

Sec. 19. 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 attorney-general, shall appoint an administrator.

Sec. 20. 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. 21. 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. 22. 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. 23. Copy of inventory of any estate subject to tax to be furnished attorney-general. A copy of the inventory of every estate, any part of which may be subject to a tax under the provisions of section 1, or if the same can be conveniently separated, then a copy of such part of such inventory with the appraisal thereof, shall be sent by mail by the register of the court of probate in which such inventory is filed. The fees for such copy shall be paid by the executor, administrator, or trustee, and allowed in his account.

If any executor, administrator, or trustee neglects or refuses to file an inventory of the estate under his charge within 3 months from the date of the warrant of appraisal, unless such time be extended by the judge of probate, he shall be cited to file such inventory by the judge of probate and if he neglects or refuses to file such inventory within 60 days thereafter, he shall be liable to a penalty of not more than \$500 which shall be recovered in an action of debt by the attorney-general for the use of the state, and the register of probate shall notify the attorney-general of the failure of any executor, administrator, or trustee to file an inventory as above provided.

Sec. 24. 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 attorney-general 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 attorney-general and the receipt of the treasurer of state 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 12.

Sec. 25. Valuation of property. The value of such property as may be subject to said tax shall be its actual market value as found by the judge of probate, after public notice or personal notice to the attorney-general and all persons interested in the succession to said property, or the attorney-general or any of said persons interested may apply to the judge of probate having jurisdiction of the estate and on such application the judge shall appoint 3 disinterested persons who, being first sworn, shall view and appraise such property at its actual market value for the purposes

of said tax, and shall make return thereof to said probate court, which return may be accepted by said court in the same manner as the original inventory of such estate is accepted, and if so accepted it shall be binding upon the persons by whom such tax is to be paid, and upon the state. And the fees of the appraisers shall be fixed by the judge of probate and paid by the executor, administrator or trustee.

Sec. 26. When and to whom taxes to be paid; duty of personal representative of deceased; register of probate to send copy of petition to attorney-general. All taxes imposed by section 1 upon the estates of deceased residents of this state shall be payable to the treasurer of state, and all taxes imposed by said section 1 upon the estates of non-resident decedents, to the attorney-general, by the executors, administrators, or trustees at the expiration of 20 months after the granting of letters testamentary or of administration; but if legacies or distributive shares are paid within 20 months, the tax thereon shall be payable at the same time; and if the same are not so paid, interest at the rate of 6% a year shall be charged and collected from the time the same became payable; but no such tax upon estates of residents or inhabitants of this state shall be accepted except upon presentation of a certificate from a probate court showing the amount of such tax due. It shall be the duty of the personal representative of said deceased to petition the probate court having jurisdiction to assess such taxes before the expiration of 20 months after the granting of letters aforesaid. The register of probate shall send by mail, a copy of such petition to the attorney-general at least 7 days before the hearing thereon unless the attorney-general in writing waives the same.

If no such petition is filed within the time limited, the attorney-general may file a similar petition, of which, unless notice is waived, at least 14 days' notice shall be given such personal representative or his agent. In either case the attorney-general may appear and be heard upon the assessment of such tax, and an appeal may be had from the decree of the judge of probate by either party.

If any legacy be given in money to any person for a limited period, such administrator, executor, or trustee shall retain the tax on the whole amount; but if it be not in money, he shall make an application to the judge of probate having jurisdiction of his accounts to make an apportionment, if the case requires it, of the sum to be paid into his hands by such legatee on account of said tax and for such further order as the case may require.

Sec. 27. Courts of probate to have jurisdiction to determine all questions relating to tax. The court of probate, having either principal or ancillary jurisdiction of the settlement of the estate of the decedent, shall

have jurisdiction to hear and determine all questions in relation to the taxes imposed by this chapter that may arise hereunder affecting any devise, legacy, or inheritance, subject to appeal as in other cases, and the attorney-general shall represent the interests of the state in any such proceedings. The judge of probate, having jurisdiction as aforesaid, shall fix the time and place for hearing and determine such questions and shall give public notice thereof and personal notice to the executor, administrator or trustee. Appeals in behalf of the estate shall be taken in the name of the executor, administrator, or trustee, and service upon the attorney-general shall be sufficient. When appeals are taken by the state, service shall be made upon the executor, administrator, or trustee.

The registers of probate in the several counties shall deliver to the attorney-general, on or before the 1st day of June in each year a list of all estates in which it appears from the record that some part of said estate may be liable to an inheritance tax, and in which a will has been offered for probate or administration granted for more than 1 year prior to the time of filing such list, and in which no inheritance tax has been assessed or paid. Said list shall contain the name of the deceased, the date of the administration granted, and the name and residence of the administrator or executor. The attorney-general shall promptly investigate all cases so reported, by notifying the executor, administrator, trustee, heir, or devisee, and in such other manner as he may determine, and if it appears to him that in any such case an inheritance tax is due and has not been paid to the state, he shall, unless said tax is paid, within 30 days after notice from him to the executor, administrator, trustee, heir, or devisee that the same is due, cite the executor, administrator, trustee, heir, or devisee, whose duty it is to pay said tax, before the proper probate court in such manner as is provided for the citation of trust officers in probate proceedings, and shall take all other action necessary to secure the payment of said tax. In such proceedings the attorney-general shall recover costs to be fixed and determined by the judge of probate in his discretion, which costs may be retained by said attorney-general for his own use and shall be additional to any salary allowed to him by law.

Estate Taxes

Sec. 28. Estate taxes, how imposed. There shall be assessed by the attorney-general, 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 of 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% or 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. 29. When payable. Said estate tax shall become payable at the expiration of 20 months from the date of the appointment of the executors, administrators, trustees, grantees, donees, beneficiaries and surviving joint owners, and they each 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 6% annually shall be charged and collected from the time the same became due. The attorney-general may, for cause, extend the time of payment.

Sec. 30. Intent of sections 28-32, inclusive. The intent and purpose of sections 28 to 32, 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 28 to 32, inclusive, by imposing an additional tax, and the same shall be liberally construed to effect this purpose. The attorney-general may make such regulations relative to the assessment and collection of the tax provided by said sections, not inconsistent with law, as may be necessary to carry out this intent.

Sec. 31. 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. 32. 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. 33. 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. 34. Duties of town and city clerks. Clerks of cities and towns shall report to the treasurer of state the names of all persons dying within their respective municipalities who in the judgment of said clerks leave estates the value whereof exceeds \$500, together with the names of husband, wife and next of kin so far as known to him; such report shall be mailed to the treasurer of state within 10 days of the time when the certificate of death is filed with such clerk. The treasurer of state shall prepare and furnish blanks for such returns.

Sec. 35. Fees of judges and registers of probate. The fees of judges or registers of probate for the duties required of them by this chapter shall be, for each order, appointment, decree, judgment or approval of appraisal or report required hereunder, 50c, and for copies of records, the fees that are now allowed by law for the same. And the administrators, executors, trustees or other persons paying said tax shall be entitled to deduct the amount of all such fees paid to the judge or register of probate from the amount of said tax to be paid to the treasurer of state.