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Public Administrators.

Sec. 52. Balance distributed.—When there is in the hands of such public administrator an amount of money more than is necessary for the payment of the deceased's debts and for other purposes of administration, if no widow, widower or heirs of said deceased have been discovered, said administrator shall be required by the judge to deposit it with the treasurer of state, who shall receive it; the state shall be responsible for the principal thereof, for the benefit of those who may lawfully claim it; and the governor and council, on application and proof, may order the treasurer to pay it over, and such principal is appropriated to pay such lawful claims. Any income earned on such funds shall be paid into the general fund as compensation for administration.

(1959, c. 319.)

Effect of amendment.—The 1959 amendment added a new sentence at the end of the first paragraph.

As the rest of the section was not affected by the amendment, it is not set out.

Special Administrators.

Sec. 56. Powers and duties.—The special administrator shall collect all the goods, chattels and debts of the deceased, control and cause to be improved all his real estate, collect the rents and profits thereof and preserve them for the executor or administrator thereafter appointed; and for that purpose may maintain suits and sell such perishable and other goods as the judge orders; and shall have such powers to vote stock owned by the deceased as the deceased would have if living, at all corporation meetings, and the authority to sell and transfer any specific rights which may have accrued to the estate of said deceased as such stockholder and the judge may authorize and direct that the business of the deceased, in whole or in part shall, for a limited time to be determined by him, be carried on by such special administrator as a going business; pay the expenses of the funeral and last sickness and of his administration; debts preferred under the laws of the United States; public rates and taxes, and money due the state from the deceased; and pay to the widow or widower, if any, and if not, to the guardian of the children under 14 years of age, for their temporary support, such sums as the judge orders, having regard to the state and the amount of the property; and sums so paid to the widow, widower or guardian shall be deducted, if the estate is solvent, from the share of the widow, widower or children, but if insolvent, shall be considered by the judge in his allowance to them. (R. S. c. 141, § 50. 1955, c. 276.)

Effect of amendment.—The 1955 amendment inserted the words "or widower" in line fourteen and the word "widower" in lines seventeen and eighteen.

Chapter 155.

Inheritance, Succession and Estate Taxes.

Administration.

Sec. 1. Inheritance and succession tax laws administered. — 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 state tax assessor. (R. S. c. 142, § 1. 1947, c. 354, § 2. 1953, c. 265, § 6. 1959, c. 33, § 14.)

Effect of amendment.—The 1959 amendment eliminated the former second paragraph providing that the commissioner of finance and administration might act for the state tax assessor with respect to inheritance taxes in his absence or disability.

Property Taxable.

Sec. 2. Property taxable; exemptions.

I.

C. 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, excepting transfers by survivorship described in paragraph D hereof; (1955, c. 430, § 1)

D. By survivorship in any form of joint ownership, other than joint bank deposits and joint building and loan shares, whenever created, the value of decedent's interest in such joint ownership to be determined for the purpose of this chapter as provided by section 10-A. (1955, c. 430, § 2. 1959, c. 210, § 1)

II. 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 170. All property which shall pass to or for the use of societies, corporations and institutions now or hereafter exempted by law from taxation, or to a public corporation, or to any society, corporation, institution or association of persons engaged in or devoted to any charitable, religious, benevolent, educational, public or other like work, pecuniary profit not being its object or purpose, or to any person, society, corporation, institution or association of persons in trust for or to be devoted to any charitable, benevolent, educational or public purpose, or the care or maintenance of cemeteries, cemetery lots or structures therein or thereon, shall be exempted; provided, however that such society, corporation, institution or association be organized and existing under the laws of this state or that the property transferred be limited for use within this state; provided further, that if such society, corporation, institution or association be organized or existing under the laws of a territory or state of the United States, other than this state, or of a foreign state or country, all property transferred to said society, corporation, institution or association shall be exempted, if at the date of decedent's death the said state or territory, or foreign state or country under the laws of which said society, corporation, institution or association was organized or existing did not impose a legacy or succession tax or a death tax of any character, in respect of property passing to or for the use of such society, corporation, institution or association organized or existing under the laws of this state, or if at the date of decedent's death the laws of the state or territory or foreign state or country under which said society, corporation, institution or association was organized or existing, contained a reciprocal provision under which such passing of property to said society, corporation, institution or association organized or existing under the laws of another state or territory or foreign state or country shall be exempt from legacy or succession or death taxes of every character, providing such other state or territory, or foreign state or country, allowed a similar exemption to such a society, corporation, institution or association organized or existing under the laws of another state or territory or foreign state or country. [1955, c. 154] (R. S. c. 142, § 2. 1949, c. 86. 1955, c. 154; c. 430, §§ 1, 2. 1959, c. 210, § 1.)

I. GENERAL CONSIDERATION.

Effect of amendments. — The first 1955 amendment deleted the words "by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy to any such property or the income thereof," which formerly appeared following the word "thereon" in line twelve of subsection II. The second 1955 amendment added the words "excepting transfers by survivorship described in paragraph D hereof" at the end

of paragraph C of subsection I and added paragraph D of subsection I.

The 1959 amendment added "whenever" following "shares" and deleted "on or after the effective date of this act" following "created" in paragraph D of subsection I.

As the rest of the section was not changed by the amendments, only paragraphs C ard D of subsection I and subsection II are set out.

Effective date of 1959 amendment.—P. L. 1959, c. 210, amending this section, provided in section 3 thereof as follows:

"Sec. 3. Effective date. This act shall apply to estates of decedents dying on or after its effective date." The act became effective on September 12, 1959.

II. PROPERTY PASSING BY INHERITANCE AND SUCCESSION, AND OTHERWISE.

And, unless otherwise provided, etc.

In accord with original. See Boston Safe Deposit & Trust Co. v. Johnson, 151 Me. 152, 116 A. (2d) 656.

Powers of appointment.—The provision of subsection (1) (c) providing for taxation of property passing by survivorship does not apply to the question of whether a power of appointment is an interest in property. Boston Safe Deposit & Trust Co. v. Johnson, 151 Me. 152, 116 A (2d) 656.

There is no specific provision in our inheritance tax statute controlling the taxation of powers of appointment. In the absence of statutory authority to tax such powers the common law principle, namely, that a power is not property, must be given effect. Hence, the testamentary power of appointment vested in a widow was not "property" or "any interest therein" passing to her within the meaning of the inheritance tax. Boston Safe Deposit & Trust Co. v. Johnson, 151 Me. 152, 116 A. (2d) 656.

III. PROPERTY PASSING TO ORGANIZATIONS.

Burden of proving exemption is on claimant.—The burden of proving an exemption from tax under the inheritance tax law is upon the claimant even though the exemption statute be liberally construed. Thirkell v. Johnson, 150 Me. 131, 107 A. (2d) 489.

But corporation cannot take free of inheritance tax, etc.

In accord with original. See Thirkell v. Johnson, 150 Me. 131, 107 A. (2d) 489.

Gift which may be used for general expenses of Masonic lodge not exempt.—A Masonic lodge is not entitled to exemption from tax upon a gift which may be used for the general expenses of the lodge on the ground that it is a charitable or benevolent institution. Thirkell v. Johnson, 150 Me. 113, 107 A. (2d) 489.

The conditions of a gift cannot be altered by the beneficiary so as to turn an otherwise taxable into an exempted gift. Thirkell v. Johnson, 150 Me. 131, 107 A. (2d) 489.

By-law of beneficiary organization cannot turn unrestricted gift into charitable trust. — An unrestricted gift under a will does not become a trust fund for charitable or benevolent purposes by reason of a by-law of the beneficiary organization that all moneys bequeathed to the organization shall become part of a permanent charity fund. Thirkell v. Johnson, 150 Me. 131, 107 A. (2d) 489.

Sec. 3. 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, stepchild, adoptive parent, wife or widow of a natural or adopted son or husband or widower of a natural or adopted daughter of a decedent, grandchild who is the natural or adopted child of a natural or adopted child of a decedent, shall be subject to a tax upon the value thereof, in excess of the exemption hereinafter provided; of 2% of such value in excess of said exemption as does not exceed $50,000; of 3% of such value as exceeds said $50,000 and does not exceed $100,000; of 4% of such value as exceeds $100,000 and does not exceed $250,000; and of 6% of such value as exceeds $250,000. The value exempt from taxation to or for the use of a husband or wife shall in each case be $15,000. The value exempt from taxation to or for the use of a father, mother, child, adopted child, stepchild or adoptive parent, or grandchild who is the natural or adopted child of a natural or adopted deceased child of a decedent, shall in each case be $10,000. If there be more than one such grandchild, their total exemption shall, per stirpes, be $10,000. The value exempt to or for the use of any other person falling within said Class A, to wit: grandparent and other

lineal ancestors of remoter degrees, wife or widow of a natural or adopted son, or husband or widower of a natural or adopted daughter of a decedent, grandchild who is the natural or adopted child of a natural or adopted living child of a decedent and other lineal descendants of remoter degrees, shall in each case be $500. (R. S. c. 142, § 3. 1945, c. 358, § 1. 1947, c. 260, § 1. 1949, c. 411. 1959, c. 290, § 1.)

Effect of amendment.—The 1959 amendment divided this section into five sentences, added the second sentence and deleted "husband, wife" before "father" and "provided however that" following "$10,000" in the third sentence.

Sec. 5. 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 12% of such value in excess of said exemption as does not exceed $50,000; of 14% of such value as exceeds $50,000 and does not exceed $100,000; of 16% of such value as exceeds $100,000 and does not exceed $250,000; and of 18% of such value as exceeds $250,000. (R. S. c. 142, § 5. 1959, c. 290, § 2.)

Effect of amendment.—The 1959 amendment increased the rate of tax in each instance in this section.

Sec. 6-A. General powers of appointment.—For all purposes of this chapter, an unconditional general power of appointment shall be regarded as absolute ownership of the interest in property subject to the power. By unconditional general power of appointment is intended a power which may be exercised at the pleasure of the holder in favor of himself, his estate or his creditors. (1957, c. 181.)

Sec. 7. Value of exempted property.—In nonresident estates the value of the property exempt from taxation under sections 2 to 6-A shall be only such proportion of the whole exempted amount as the estate of the nonresident taxable in this state bears to the total estate wherever situated. (R. S. c. 142, § 7. 1959, c. 363, § 48.)

Effect of amendment.—Prior to the 1959 amendment the reference in this section was to "the provisions of the foregoing sections."

Value for Taxation.

Sec. 10-A. Value of share of joint owner.—If the decedent, at the time of his death, shall be the co-owner of any form of property, other than joint bank deposits or joint building and loan shares, in any form of joint ownership, whenever created, the value of such joint ownership shall be determined by dividing the whole value of the property by the number of co-owners, regardless of the amount, if any, contributed by any individual co-owner. (1955, c. 430, § 3. 1959, c. 210, § 2.)

Effect of amendment.—The 1959 amendment added the word "whenever" after the word "ownership" and before the word "created" and deleted the words "on or after the effective date of this act" formerly appearing after the word "created" and before the word "the" in this section.

Effective date. — P. L. 1959, c. 210, amending this section, provided in section 3 thereof as follows: "This act shall apply to estates of decedents dying on or after its effective date." The act became effective on September 12, 1959.

Sec. 10-B. Consideration for inter vivos transfer.—If the decedent shall have made a transfer described as taxable by section 2, subsection I, paragraph B, for a less than full consideration in money or money's worth, the value subject to tax shall be the value of the property transferred less the value of such consideration. (1959, c. 186.)

Lien.

Sec. 18. Lien.—Property subject to taxes as aforesaid, in whatever form of investment it may happen to be, 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 sections 1 to 44, inclusive, 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 payment thereof, the state tax assessor shall cause a certificate showing such payment to be recorded in the registry of deeds in each county where said real estate is located.

Such lien shall expire 5 years after an inventory of the property with respect to which the lien exists is filed with the state tax assessor; provided, however, the state tax assessor may record in the registry of deeds in the county where such property is located, within said 5-year period, a certificate of lien, which shall extend said lien for an additional period of 5 years beginning at the termination of the first 5-year period, and the assessor may further extend said lien 5 years at a time by filing additional certificates of lien. Such certificate of lien shall be sufficient if it states the name of the decedent, identifies the property, states that the assessor claims a lien thereon for unpaid inheritance or estate taxes, and shall state the name of the record owner of such property at the time of decedent's death if other than decedent.

If the lien shall not have been terminated as above set forth, it shall in any event expire 10 years after decedent's death, unless further extended by the filing of a lien certificate as above set forth, as to any property in the hands of a purchaser for value.

The limitations established shall apply to liens heretofore as well as hereafter created. (R. S. c. 142, § 17. 1947, c. 354, § 6. 1955, c. 272. 1957, c. 429, § 89.)

Effect of amendments.—The 1955 amendment deleted the words "of which a decedent dies seized or possessed" after the word "property" at the beginning of the first sentence and the words "and all property acquired in substitution therefor" before the word "shall" where it first appears in the first sentence. The amendment also added the second, third and fourth paragraphs.

The 1957 amendment, which became effective October 31, 1957, deleted "herein" after "limitations" in the last paragraph and deleted all of the language after "created" formerly reading: "provided, however, that no lien heretofore created shall expire prior to 6 months after the effective date of this act," in that paragraph.

Payment.

Sec. 21. Action of debt by state; bond.—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 the provisions of sections 1 to 44, inclusive, with interest thereon. Administrators and executors shall be liable to the state on their administration bonds for all taxes assessable under the provisions of said sections 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 may, and unless he shall find that any inheritance or estate tax due and to become due the state is reasonably secured by the lien upon real estate hereinbefore provided 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. (R. S. c. 142, § 20. 1955, c. 173.)

Effect of amendment.—The 1955 amendment substituted, in the third sentence, the words "unless he shall find that any inheritance or estate tax due and to become due the state is reasonably secured by the lien upon real estate" for the words "if in his judgment the amount of any bequest or distributive share of the estate may be subject to a tax as."

Sec. 22. Administrator 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, or if the executor or administrator does not qualify within said period, the probate court, upon application by the state tax assessor, may appoint an administrator. Nothing shall prevent the tax assessor from petitioning for appointment within 6 months after the date of death, if in the opinion of the tax assessor such action is necessary. (R. S. c. 142, § 21. 1947, c. 354, § 7. 1959, c. 224, § 1.)

Effect of amendment.—The 1959 amendment added "or if the executor or administrator does not qualify within said period" after "death" in the first sentence, substituted "may" for "shall" near the end of that sentence and added the second sentence.

Appraisal and Valuation.

Sec. 30. Deductions of nonresidents.

VIII. The federal estate tax, if any, multiplied by a fraction, the numerator of which is the value of the real and tangible personal property in Maine, subject to the federal estate tax, and the denominator the value of the gross estate, wherever situated, subject to the federal estate tax;
(1959, c. 224, § 2.)

Effect of amendment.—The 1959 amendment substituted "subject to the federal estate tax" for "undiminished by mortgage or pledge," added "value of the" before "gross" and "subject to the federal estate tax" at the end of subsection VIII.

As the rest of the section was not affected by the amendment, it is not set out.

Sec. 33. Petition for abatement.

Applied in Boston Safe Deposit & Trust Co. v. Johnson, 151 Me. 152, 116 A. (2d) 656.

Definitions and Limitations.

Sec. 43. Definitions.

"Property".—The present definition of property in this section was enacted in like language in 1893, and is almost identical in language with the Massachusetts Act of 1891. Boston Safe Deposit & Trust Co. v. Johnson, 151 Me. 152, 116 A. (2d) 656.

Chapter 158.

Guardians. Adoption of Persons. Change of Name.

Guardians for Minors.

Cross reference.—See c. 158-A, §§ 1-10, re Uniform Gifts to Minors Act.