

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX COMMISSIONER

Series 6

INHERITANCE AND TRANSFER TAX

(Chapter 11, Article 11, of the Code)

RULES AND REGULATIONS

G. Thomas Battle
State Tax Commissioner

Effective

September 15, 1966

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE *August 17, 1966*

FILING OF ADMINISTRATIVE REGULATIONS

References are to sections in W. Va. Adm. Reg. 11-11 Ser. VI

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX COMMISSIONER

Chapter 11-11
Series VI
(1966)

FILED IN THE OFFICE
ROBERT D. DALRY
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STATE TAX COMMISSIONER

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE: August 17, 1966

Chapter 11-11
Series VI
(1966)

Subject: Rules and Regulations for the Inheritance and Transfer Tax Division.

Section 1. General.

1.01. Authority.--These regulations are issued under authority of West Virginia Code, Chapter 11, Article 11.

1.02. Scope.--These regulations establish rules and procedures in the office of the Inheritance and Transfer Tax Division with respect to the deductibility of Federal Estate Tax prior to the imposition of Inheritance and Transfer Tax and the imposition of Inheritance and Transfer Tax to property held in survivorship form.

1.03. Effective Date.--These regulations are promulgated August 17, 1966, and become effective on thirty days thereafter.

1.04. Filing Date.--These regulations were filed in the Office of the Secretary of State on August 17, 1966.

1.05. Certification.--These regulations are certified authentic by the State Tax Commissioner by certification number _____.

Section 2. DEDUCTION OF FEDERAL ESTATE TAX.

2.01. In general. With respect to decedents dying on or after March 6, 1959, where a decedent dies a resident of West Virginia, a deduction is allowed for Federal estate tax paid in determining the inheritance tax. The amount of the deduction is the Federal estate tax paid, to the extent that, by reason of applicable State or Federal law, the estate tax is properly payable by, and the ultimate legal incidence of the estate tax is upon, the decedent's probate estate or upon the recipient or holder of other property subject to the inheritance tax. In the absence of any direction to the contrary in the decedent's will or other written instrument, where, under

applicable State or Federal Law the executor or administrator of the decedent's estate or any other person is entitled to reimbursement from any person receiving or holding property passing by reason of the decedent's death for Federal estate tax paid with respect to such property, no deduction is allowed to the extent of such reimbursement unless the amount with respect to which such right of reimbursement exists is uncollectible and such right is therefore ineffective. The Commissioner will consider any such right of reimbursement effective unless the executor, administrator or other person having such right furnishes the Commissioner with satisfactory evidence of the uncollectibility of all or a part of the amount to which such right of reimbursement exists.

2.02. Where all property subject to Federal estate tax is also subject to inheritance tax. Where all property subject to Federal estate tax is also subject to the inheritance tax, the full amount of the estate tax is allowed as a deduction for inheritance tax purposes.

Example 1. Decedent died intestate April 1, 1959. The value of all property included in his estate for both Federal estate tax and inheritance tax purposes was \$100,000. An estate tax of \$2,000 was paid by his administrator. The \$2,000 is deductible for inheritance tax purposes.

Example 2. Decedent died testate April 1, 1959. His will, after making several specific bequests, directed his executor to pay out of his residuary estate all State and Federal taxes imposed by reason of his death. All property subject to Federal estate tax was also subject to inheritance tax. The executor paid an estate tax in the amount of \$12,000. The \$12,000 is deductible for inheritance tax purposes.

2.03. Where part of the property subject to Federal estate tax is not subject to inheritance tax. (a) In general. Federal estate tax paid is

allowed as a deduction in determining the inheritance tax except where the person paying the estate tax has an effective right of reimbursement (whether exercised or not) pursuant to State or Federal law or under the decedent's will. The amount of the deduction for Federal estate tax depends in each case, upon the ultimate legal incidence of the estate tax. No deduction is allowed for that portion of Federal estate tax paid with respect to property which is not subject to inheritance tax where the person paying such portion of estate tax has an effective right of reimbursement therefor (whether exercised or not). However, the deduction is allowed to the extent that the person paying such portion of estate tax cannot recover the amount to which he would otherwise be entitled by reason of such right of reimbursement.

(b) Where decedent dies intestate or where there is no direction by will or otherwise respecting payment of Federal estate tax. Where the decedent dies intestate or where the will or other written instrument contains no direction with respect to the payment of Federal estate tax, the portion of estate tax which is attributable to property not subject to inheritance tax is deductible to the extent that the person paying the estate tax cannot recover the amount thereof from the person receiving or holding such property. The following examples illustrate this provision:

Example 1. The decedent died intestate April 1, 1959. Part of the property subject to Federal estate tax is not subject to inheritance tax. The administrator paid the Federal estate tax in the amount of \$15,000. Of this amount, \$1,000 was attributable to property not subject to inheritance tax. The administrator establishes, to the satisfaction of the Commissioner, that he cannot recover such amount from the recipient or holder of the property. The entire estate tax, \$15,000, is deductible in determining the amount subject to inheritance tax.

Example 2. The facts are the same as in Example 1, except that the administrator could recover the portion of estate tax which is attributable to property not subject to inheritance tax. In this case the deduction is limited to \$14,000.

(c) Where decedent dies testate and his will or other written instrument contains a direction for the payment of Federal estate tax. Where the decedent's will or other written instrument directs his executor or other person to pay the Federal estate tax out of property subject to inheritance tax, the entire amount of estate tax paid is allowed as a deduction for inheritance tax purposes. In computing the inheritance tax, such amount is first deducted from the value of such property before the applicable rate of tax is applied. The following examples illustrate this provision:

Example 1. Decedent died testate April 1, 1959. The value of all property included in his estate for estate tax purposes amounted to \$100,000. Only part of this property is subject to inheritance tax. The decedent's will directs that Blackacre, a farm owned by decedent in Marion County, West Virginia, shall be sold and the proceeds used to pay the estate tax. Blackacre was sold for an amount in excess of the amount of the estate tax. The entire amount of the estate tax paid is deductible.

Example 2. Decedent died testate April 1, 1959. His gross estate for Federal estate tax purposes consisted of life insurance proceeds payable to his wife in the amount of \$100,000, and stocks having a value of \$200,000. He bequeathed \$10,000 to his son. The will directed the executor to pay out of the residuary estate all inheritance and estate taxes imposed by reason of his death, and further directed that no part of any such taxes so paid should be deducted from any bequest, or collected from or paid by any other person (including, but not limited to, any person who is a beneficiary of insurance on his life), by way of reimbursement,

proration, apportionment or otherwise. The balance of the residuary estate was bequeathed to decedent's wife. The entire Federal estate tax paid is deductible.

2.04. Where Federal estate tax valuation is different from inheritance tax valuation of the same property. The amount of Federal estate tax deductible for inheritance tax purposes is the amount actually paid or payable, without regard to the valuation of such property for Federal estate tax purposes.

Example. The decedent died April 1, 1959. The fair market value at the date of his death of all property subject both to Federal estate tax and inheritance tax was \$100,000. On April 1, 1960, the alternate valuation date for estate tax purposes, the value was \$75,000. The alternate valuation date was elected by the executor. The estate tax amounted to \$2,000. Only \$2,000 will be allowed as a deduction in determining the value of property subject to the inheritance tax.

2.05. Information required to support deduction. To facilitate audit of the deduction claimed for Federal estate tax paid, the executor or administrator shall file with the State Tax Commissioner, at the time of filing of the Federal return with the Internal Revenue Service, either (a) a copy of the Federal estate tax return, or (b) a detailed reconciliation of any differences between the property and deductions reported for Federal estate tax purposes and those reported for West Virginia inheritance tax purposes. If any refund or additional payment of Federal estate tax is made by or to the Internal Revenue Service, the person receiving or paying such amount shall give the Commissioner written notice thereof with thirty (30) days after receipt or payment of such amount.

2.06. Effective date. This ruling shall apply with respect to estates of decedents dying on or after March 6, 1959 (the effective date of Chapter 44, Article 2, Section 16a, West Virginia Code).

Section 3. JOINTLY HELD PROPERTY.

3.01. In general. The entire value of any property owned by a decedent or to which he was absolutely entitled, and which he has transferred or vested, or caused to be transferred to or vested in himself and any other person jointly, with right of survivorship, in whole or in part, in such other person, shall be subject to inheritance tax except as otherwise herein provided. This ruling applies to any form of joint ownership of real or personal property where each co-owner has a joint interest of any kind during their joint lives and where the surviving co-owner takes the whole estate, including common law joint tenancies, "joint tenancies with right of survivorship", joint accounts held in "A or B" form and "A or B or the survivor" form, and any other form of ownership where the requirements of this section 1 of this ruling are satisfied regardless of how many persons may have joint interests in the property in question. The term "joint tenants with right of survivorship" is used herein for convenience, and includes all forms of ownership of property which are subject to the provisions of this ruling. This ruling does not apply to tenancies by the entirety, and no position is taken in this ruling either on the question of the existence of the estate of tenancy by the entirety in the State of West Virginia or on the question of the application of the inheritance tax to the transfer of property so held. This ruling does not apply to undivided interests in property held by a decedent as a tenant in common or in some other form of ownership where the surviving co-owner takes nothing by survivorship.

Example 1. A during his lifetime caused Blackacre, wholly owned by him, to be transferred to himself and B, his son, as joint tenants with right of survivorship, without consideration by B. Thereafter, A died while Blackacre was still held in such form. The whole value of Blackacre is subject to

inheritance tax at A's death. The same result would follow if A paid the entire consideration for the purchase of Blackacre and caused the seller to convey it to himself and B as joint tenants with right of survivorship. The same result would also follow if the transfer was made or caused by A without consideration to A and his sons B, C and D, with right of survivorship among the four co-tenants, and A died while Blackacre was so held.

Example 2. H, purchases U. S. Savings Bonds, of any series, causing them to be issued and registered in the names of H or W, husband and wife. The cash value of the bonds on the date of H's death is subject to tax as provided herein subject to the provisions of Sections 3.02, 3.03, and 3.04 of this regulation, in the case of decedents dying on or after September 15, 1966.

3.02. Consideration by survivor. When the survivor of two or more joint tenants has provided any part of the consideration for the purchase or acquisition of property held in joint tenancy with right of survivorship, a proportionate part of the value of the property will be excluded in the application of the inheritance tax. In any case in which it is claimed that the survivor furnished part of the consideration hereunder, the person whose duty it is to pay the inheritance tax thereon shall have the burden of proving to the Commissioner the amount of such consideration furnished by or attributable to the survivor.

Example 1. A and B, brothers, own property as joint tenants with right of survivorship valued at \$30,000 at the death of A. It is proved to the Commissioner that the property was purchased for \$20,000, and that A provided \$15,000 and B \$5,000. Three fourths of \$30,000, or \$22,500, is subject to inheritance tax at A's death.

3.03. Acquisition by Gift or Inheritance. In any case where property has been acquired by decedent and another as joint tenants with right of survivorship by gift or inheritance from a third party, no part of the value of such property is subject to inheritance tax upon the death of the first of such joint tenants to die.

3.04. Husband and wife. In the case of decedents dying on or after June 3, 1957, where the decedent and his or her surviving spouse hold property

as joint tenants with right of survivorship, not more than fifty percentum of the value of such property shall be subject to the inheritance tax unless the creation of the joint estate is one which raises the statutory presumption of being made in contemplation of death in which event the entire value may be subject to tax.

Example 1. A and B, husband and wife, own real property valued at A's death at \$25,000 as joint tenants with right of survivorship, for which A provided the entire purchase price. At A's death, one half of the value of the property, or \$12,500, will be subject to inheritance tax. (See Section 3.05, Example 1, hereunder with regard to joint accounts in the name of husband and wife.)

Example 2. The facts are the same as in Example 1, except that it is established that the date of the creation of the joint estate by A took place within the three year period of time immediately preceding A's date of death. The full value of the property, \$25,000 will be subject to the imposition of tax in the absence of evidence to overcome the statutory presumption.

Example 3. The facts are the same as in Example 1, except that it is proved to the Commissioner that B provided \$5,000 of the cost of the property, purchased for a total of \$20,000, with money inherited by her from her parents. One fourth of the value of the property at A's death, or \$6,250, is excluded because of the consideration furnished by the surviving spouse; one half of the remaining \$18,750, or \$9,375, is excluded under the fifty percent exclusion provided for jointly held property in the name of husband and wife; the remaining \$9,375 is subject to inheritance tax at A's death.

3.05. Joint Accounts. (a) In General. Amounts on deposit in joint checking and savings accounts in any bank, federal savings and loan associations or building and loan associations in the name of a decedent and another, where either party may withdraw funds from the account upon his sole signature for his or her own use, and where the whole balance on deposit at the death of

either vests in the survivor, are wholly subject to inheritance tax upon the death of the first of such depositors to die, except as otherwise provided herein.

- (b) Exemption for Accounts in Name of Husband and Wife. A maximum of 50 percentum of the aggregate amount of joint accounts in the name of husband and wife (in "A or B" or "A or B and the survivor" or similar form) is subject to inheritance tax upon the death of the first to die of such husband and wife.
- (c) \$2,500 Exemption. An aggregate of \$2,500 on deposit in joint accounts in "A or B" or "A or B and the survivor" or similar form, in the name of a decedent and his or her spouse, parent, child, step-child or the descendants of a living or deceased child is exempt from inheritance tax. Where a decedent maintained joint accounts subject to tax hereunder with more than one person within the degree of relationship qualifying for the \$2,500 exemption, the exemption will be prorated among the various accounts in proportion to the amount of deposit and subject to tax (before application of any exemptions) in each account.
- (d) Contribution by Survivor. A portion of any joint account subject to tax hereunder is exempt from inheritance tax to the extent that it is proved to the Commissioner that the survivor was the source of or actual owner of funds in the account.

Example 1. H and W, husband and wife, have accounts amounting to a total of \$20,000 in various banks in the form "H or W" or "H or W or the survivor". In the absence of proof of contribution by the survivor or ownership of any portion of the account by the survivor or another person, a total of \$10,000 of such accounts is exempt from tax under the exemption provided for property held in the name of husband and wife, as joint tenants with right of survivorship; \$2,500 of the remainder is exempt from tax; \$7,500 of such accounts is subject to the inheritance tax.

Example 2. The facts are the same as in Example 1, except that the \$20,000 is on deposit in a single account and it is proved that W contributed \$5,000 out of the total. The \$5,000 contribution by W is excluded; one half of the remaining \$15,000, or \$7,500 is exempt from tax under the exclusion for property held in the name of husband and wife as joint tenants with right of survivorship; \$2,500 of the remainder is exempt from tax; \$5,000 of the account is subject to the inheritance tax.

Example 3. At the date of his death A was shown as a co-depositor on the records of various banks as follows: "A or B" (A's wife) \$10,000.00; "A or C" (A's son) \$5,000.00; "A or D" (A's nephew) \$5,000.00. \$5,000 of the account in the name of A or B is exempt from inheritance tax under the exemption for property held in the name of husband and wife, as joint tenants with right of survivorship. The \$2,500 exemption is prorated between the accounts passing to the wife B and to the son C; no part of the \$2,500 exemption is prorated to the account in the name of A and his nephew D, because D is not within the necessary degree of relationship with A to qualify for the exemption. $10,000/15,000$ ths of the \$2,500 exemption, or \$1,666.67, is allocated to the "A or B" account and $5,000/15,000$ ths of the exemption, or \$833.33, is allocated to the "A or C" account. Thus only \$3,333.33 of the account in the name of "A or B" is subject to inheritance tax and \$4,166.67 of the account in the name of "A or C" is subject to tax. The entire \$5,000 on deposit in the account in the names of "A or D" is subject to tax.

3.06. Ownership of Property. In any case where property is held in joint tenancy with right of survivorship, or a similar form of title, and real or beneficial ownership of such property is otherwise than that indicated by such form of title, real or beneficial ownership shall be controlling in the determination of application of the inheritance tax.

Example 1. A bank account in the names of "A" or "B" contained a balance of \$10,000 at the death of A. The entire balance belonged to A, the account having been established in "A or B" form only for the convenience of A, so that B might draw funds on the account for purposes designated by A or for A's benefit. As a result, A's executor has the right to receive the balance. The balance in the account is wholly subject to inheritance tax and does not qualify for the fifty per cent and \$2,500 exclusions, regardless of the relationship between A and B.

3.07. Jointly Held Property Subject to Debt. In any case where property held by a decedent and another as joint tenants with right of survivorship is subject to a lien to secure a debt, that is, where such property is pledged as security for a debt, the amount which is deductible in computing the inheritance tax depends upon the ultimate incidence of legal liability for payment of such debt. The deductibility of the debt is not affected by the fact that a portion of the property securing such debt may be excluded from taxation under a particular provision of law, such as the provision excluding a maximum of fifty percent of property held by husband and wife as joint tenants with right of survivorship.

Example 1. H and W, husband and wife, purchased property for use as a personal residence, H providing funds for payment of one half of the purchase price and the remaining one half being financed by a loan secured by lien on the property. Title was taken in H and W as joint tenants with right of survivorship, and both H and W executed the promissory note evidencing the loan. Payments were made on the loan by H during lifetime, but H died before the debt was entirely paid. One-half of the total value of the property is subject to inheritance tax at H's death, the other half being excluded under the fifty per cent exclusion provided for jointly held property owned by husband

and wife. In the usual case one half of the debt will be allowable as a deduction for inheritance tax purposes. The same portion of the debt will be deductible if H and W are not husband and wife, or if W provides part of the consideration for purchase of the property, or if payments on the loan are made out of W's separate funds. However, if the ultimate legal liability for payment of the entire amount of the debt is on H's estate, and H's estate is actually subjected to payment of the whole amount of the debt, then the entire amount of the debt is deductible for inheritance tax purposes.