



FILED

State Tax Department
of West Virginia

1985 JUN 17 AM 9:52

SECRETARY OF STATE

Charleston 25305

ARCH A. MOORE, JR.
GOVERNOR

June 17, 1985


Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, WV 25305

Dear Mr. Hechler:

Pursuant to the provisions of W. Va. Code § 29-3-1 et seq., I hereby submit one (1) copy of Emergency Legislative Rules and Regulations promulgated by this Department and which relate to utilization of the estate appraisement form required under W. Va. Code § 44-1-14 as the notification of death and preliminary notice form required under W. Va. Code § 11-11-7.

These emergency regulations take effect on July 1, 1985.

Very truly yours,


Michael E. Caryl
State Tax Commissioner

MEC/jms
Enclosure

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NOTICE OF PUBLIC HEARING OR COMMENT PERIOD ON PROPOSED RULE

SECRETARY OF STATE

COMMENT PERIOD

AGENCY: Tax Department
RULE TYPE: Emergency Legislative
RULE TITLE: Utilization Of Estate Appraisement Form Completed
Under W. Va. Code § 44-1-14 For Notification Of Death
Under W. Va. Code § 11-11-7.

A COMMENT PERIOD ON THE ABOVE PROPOSED RULE HAS BEEN
SCHEDULED AND WILL END ON July 31, 1985 at 4:00 p.m. WRITTEN
COMMENTS ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

State Tax Commissioner
Capitol Building, WW-300
Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED
RULE.


Michael E. Cary
State Tax Commissioner

NOTICE OF EMERGENCY RULE

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RULE TITLE: Utilization Of Estate Appraisement Form Completed
Under W. Va. Code § 44-1-14 For Notification Of Death
Under W. Va. Code § 11-11-7.

The attached rule is filed as an Emergency Rule. The facts and circumstances constituting the emergency are as follows:

Whereas, the Legislature passed on April 12, 1985 Senate Bill 73, such bill to take effect July 1, 1985.

Whereas, Senate Bill 73 repealed W. Va. Code § 11-11-1 et seq. which imposed an inheritance tax and enacted a new W. Va. Code § 11-11-1 et seq. which imposed an estate tax.

Whereas, when the Legislature repealed W. Va. Code § 11-11-17, it repealed the statutory requirement that the completed form utilized for appraising the value of a decedent's estate be submitted to the Tax Department within sixty (60) days from the date of the decedent's death.

Whereas, prior to the repeal of W. Va. Code § 11-11-17, the completed form utilized for appraising the value of the decedent's estate also served the function of providing to the Tax Commissioner notification of decedent's estate.

Whereas, the new W. Va. Code § 11-11-7 requires the personal representative to provide to the Tax Commissioner, within two (2) months after the decedent's death or within two (2) months after becoming qualified as personal representative, written notice of the

decedent's death.

Whereas, the new W. Va. Code § 11-11-33 authorizes the Tax Commissioner to prescribe the form and content of any return or other document, and to require such facts and information to be reported as he deems necessary.

Whereas, budget restrictions and government cost effectiveness necessitates utilization of current printed forms prior to printing at great expense newly designed forms.

Whereas, W. Va. Code § 44-1-14 was not amended and does require submission to the Tax Commissioner of an appraisal and inventory of decedent's estate and such appraisal and inventory would be duplicative of the preliminary notice and report required by W. Va. Code § 11-11-7.

Whereas, the new W. Va. Code § 11-11-36 provides civil penalties for anyone who fails to comply with the requirements of the new W. Va. Code § 11-11-1 et seq.

Wherefore, the Tax Commissioner determined that it was and is in the best interests of persons who are responsible for notifying the State of the decedent's estate and for appraising the value of decedent's estate, and of the State, that the following emergency regulations be filed in the State Register in order that the provisions thereof become effective immediately upon filing as provided in W. Va. Code § 29A-3-15, so that the Tax Commissioner may promulgate regulations on: utilization of the estate appraisal form as the form to provide the required notification of decedent's death, that the form must be filed within a specified time period and the penalty imposed for failure to comply with these regulations.

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EMERGENCY

WEST VIRGINIA ADMINISTRATIVE REGULATIONS SECRETARY OF STATE

STATE TAX DEPARTMENT

Chapter 11-10

Series XI

(1985)

Subject: Utilization of Estate Appraisement Form Completed
Under W. Va. Code § 44-1-14 For Notification Of
Death Under W. Va. Code § 11-11-7

Filed in State Register

June 17, 1985

FILED

JUN 17 AM 9 52
Section 7.01(a)

SECRETARY OF STATE

EMERGENCY
UTILIZATION OF ESTATE APPRAISEMENT
FORM FOR NOTIFICATION OF DEATH
REGULATIONS

Section 7. Utilization of Estate Appraisement Form Completed
Under W. Va. Code § 44-1-14 For Notification Of
Death Under W. Va. Code § 11-11-7.

7.01. General.

(a) Type of Regulations. -- These are emergency legislative regulations as defined in W. Va. Code §§ 29A-1-2(d) and 29A-3-15.

(b) Scope. -- These emergency legislative regulations provide for utilization of the estate appraisement form filed under authority of W. Va. Code § 44-1-14 as being the form required for notification of death (Preliminary Notice and Report) under W. Va. Code § 11-11-7.

(c) Authority. -- The emergency legislative regulations are issued under the authority of W. Va. Code §§ 11-10-5(a) and 29A-3-15.

(d) Filing Date. -- These emergency legislative regulations were promulgated and filed in the State Register on June 17, 1985.

Section 7.01(e)

(e) Effective Date. -- These emergency legislative regulations take effect on July 1, 1985, and are effective for a period of fifteen (15) months thereafter.

(f) Citation. -- These emergency legislative regulations may be cited as: W. Va. Emerg. Leg. Reg. 11-10, Ser. XI, § 7. ____, page ____ (1985).

Section 7.02(a)

7.02. Scope and Use of Rule.

(a) Scope. -- This rule describes how the appraisal form which is utilized by the personal representative, or the supervisor thereof, in valuing an estate under the authority of W. Va. Code § 44-1-14, shall also be the form utilized for notification of death (Preliminary Notice and Report) under W. Va. Code § 11-11-7. This rule does not relate to any other matter.

(b) Use of Rule. -- This rule shall be followed by all persons acting in the capacity of personal representative of a decedent's estate and/or who are responsible for submission to the Tax Commissioner of the notification of death (Preliminary Notice and Report) under the authority of W. Va. Code § 11-11-7 and/or the estate appraisal form under the authority of W. Va. Code § 44-1-14.

7.03. Annual Updating.

This rule shall be reviewed annually, and amended as necessary and in accordance with the provisions and requirements of W. Va. Code § 29A-3-1 et seq., in order to properly reflect any future change in statutory or case law, to clarify application(s) of existing laws or legislative regulations and to amend policies and procedures of the State Tax Department adopted by procedural or interpretive regulations to implement such laws and regulations.

7.04. Definitions.

The following definitions of terms as used in these regulations shall apply, unless the context clearly requires a different meaning.

(a) Decedent or transferor -- The term "decedent" shall mean a deceased natural person by or from whom a transfer is made; and include any testator, intestate grantor, bargainor, vendor, assignor, donor, joint tenant or insured.

(b) Estate or property -- The terms "estate" or "property" mean the real or personal property or interest therein of a decedent or transferor, and includes all the following:

(1) All intangible personal property of a resident decedent within or without this state or subject to the jurisdiction of this state.

(2) All intangible personal property in this state belonging to a deceased nonresident of the United States, including all stock of a corporation organized under the laws of this state, or which has its principal place of business or does the major part of its business in this state, or of a federal corporation or national bank which has its principal place of business or does the major part of its business in this state, excluding, however, savings accounts and savings and

Section 7.04(c)

loan associations operating under the authority of the state banking commissioner or the federal home loan bank board, and bank deposits, unless those deposits are held and used in connection with a business conducted or operated, in whole or in part, in this State.

(c) Intangible personal property -- The term "intangible personal property" means incorporeal personal property including deposits in banks, negotiable instruments, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in personal property, evidences of debt and choses in action generally.

(d) Internal Revenue Code -- The term "Internal Revenue Code" means the United States Internal Revenue Code of 1954, as amended and in effect on the first day of January, on thousand nine hundred eighty-five, including all changes to such code enacted subsequent to such date, that are similar to or a replacement of the section cited or referred to.

(e) Person -- The term "person" includes natural person, corporation, society, association, partnership, joint venture, syndicate, estate, trust or other entity under which business or other activities may be conducted.

(f) Person required to file -- The phrase "person required to file" means any person, including a personal representative,

Section 7.04(g)

qualified heir, distributee, or trustee required or permitted to file a federal estate tax return, or a West Virginia estate tax return, pursuant to the provisions of the Internal Revenue Code or this article.

(g) Personal representative -- The term "personal representative" shall mean:

(1) The personal representative of the estate of the decedent, appointed, qualified and acting within this state; or

(2) If there is no personal representative appointed, qualified and acting within this state, then any person in actual or constructive possession of the West Virginia gross estate of the decedent. The term "personal representative" includes the executor of a will, the administrator of the estate of a deceased person, the administrator of such estate with the will annexed, the administrator de bonis non of such estate, whether there be a will or not, the sheriff or other officer lawfully charged with the administration of the estate of a deceased person, and every other curator or committee of a decedent's estate for or against whom suits may be brought for causes of action which accrued to or against such decedent.

(h) Real property situated in this state -- The phrase

Section 7.04(i)

"real property situated in this state" means any and all interests in real property located in this state, including leasehold interests, royalty interests, production payments and working interests in coal, oil, gas and other natural resources.

(i) Tangible personal property -- The term "tangible personal property" means corporeal personal property including money.

(j) Tax commissioner -- The term "tax commissioner" means the tax commissioner of the state of West Virginia or his delegate.

(k) Value -- The term "value" means the value of property, the value of the gross estate or the value of the taxable estate as finally determined for federal estate tax purposes under the laws of the United States relating to federal estate taxes.

7.05. Preliminary Notice and Report Form.

(a) The personal representative, within two (2) months after the decedent's death, or within a like period after qualifying as personal representative, shall give written notice of the decedent's death to the Tax Commissioner.

(1) This required notice shall be on the form prepared and published by the Tax Commissioner.

(2) The form to be utilized for providing such written notice shall be the Appraisalment Of The Estate form provided by the State Tax Commissioner.

(3) The form shall be fully and accurately completed at the time it is submitted for the purpose of providing the required notice of decedent's death.

(b) If a federal estate tax return is required by the applicable provisions of the federal Internal Revenue Code, a copy of the preliminary notice filed with the federal government may be filed with the Tax Commissioner in lieu of such preliminary notice and report.

7.06. Penalty for Failure to Comply.

(a) If any person fails to comply with the duty imposed upon him by this regulation, he shall be liable for a money penalty of not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00) to be recovered in a civil action in the name of the State of West Virginia.

(b) In addition to the penalty prescribed in the immediately preceding subsection, such person shall also be liable for the cost of the suit brought to impose the foregoing penalty.

EMERGENCY
WEST VIRGINIA LEGISLATIVE REGULATIONS
STATE TAX DEPARTMENT

Chapter 11-10
Series XI
(1985)

Subject: Utilization of Estate Appraisement Form Completed
Under W. Va. Code § 44-1-14 For Notification Of
Death Under W. Va. Code § 11-11-7

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