

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2332

Session of
1982

INTRODUCED BY DORR, L. E. SMITH, SEVENTY, F. E. TAYLOR,
SERAFINI, CAPPABIANCA, BELARDI, BURD, McVERRY, PISTELLA,
DeVERTER, HEISER, ZWIKL, REBER, GEIST, BOYES, FLECK, MARMION,
TADDONIO, POTT, SIEMINSKI, GRUPPO, BOWSER, MACKOWSKI, FARGO,
CLYMER, GREENWOOD, MERRY, STEVENS, SAURMAN, DAIKELER, SNYDER,
WASS, E. Z. TAYLOR, HAYES, NOYE AND CORDISCO, MARCH 3, 1982

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
NOVEMBER 15, 1982

AN ACT

1 Amending the act of June 15, 1961 (P.L.373, No.207), entitled
2 "An act providing for the imposition of certain taxes upon
3 the transfer of property passing from a decedent who was a
4 resident of the Commonwealth at the time of his death or
5 presumed death and of property having its situs in the
6 Commonwealth of a decedent who was a nonresident of the
7 Commonwealth at the time of his death or presumed death;
8 imposing additional taxes to equal Federal Estate Tax
9 Credits; defining and taxing certain transfers made in
10 contemplation of death, or to take effect in possession or
11 enjoyment at or after death; defining as a transfer and
12 taxing the right of survivorship in certain property as to
13 which such right exists; defining and exempting from tax,
14 transfers to certain persons or for certain purposes or of
15 certain property; providing for the valuation of property and
16 interests in property, the transfer of which is subject to
17 tax; defining and allowing deductions from the value of
18 property, the transfer of which is subject to tax; providing
19 for the persons ultimately liable for taxes in the absence of
20 a direction by the decedent to the contrary; providing for
21 the reporting of transfers and collection of taxes; imposing
22 penalties upon banks or other financial institutions for
23 failure to give notice to the Department of Revenue of the
24 death of a party to a joint or trust deposit therein and upon
25 persons who fail to file tax returns and documents; providing
26 for the compromise of taxes in the case of alleged
27 nonresidents of the Commonwealth; making it unlawful for any
28 person to make a false return or report; providing for liens
29 upon real property, the transfer of which is subject to tax,

1 and release thereof; authorizing the Secretary of Revenue to
2 bring suits in other jurisdictions for the collection of
3 taxes, and authorizing officials of other jurisdictions to
4 bring suits in the Commonwealth for the collection of death
5 taxes imposed by their jurisdictions; providing for the
6 refund of taxes to which the Commonwealth is not rightfully
7 or equitably entitled; providing for appeals and protests
8 from the imposition of taxes; regulating the entry into safe
9 deposit boxes of a decedent by certain persons, and providing
10 penalties; dealing with the jurisdiction, powers and
11 procedure of the orphans' court, Secretary of Revenue,
12 Department of Revenue, Attorney General, and register of
13 wills in matters relating to taxes; and citing certain acts
14 for repeal," further providing for tax for small business
15 transfers.

16 The General Assembly of the Commonwealth of Pennsylvania
17 hereby enacts as follows:

18 Section 1. The act of June 15, 1961 (P.L.373, No.207), known
19 as the "Inheritance and Estate Tax Act of 1961," is amended by
20 adding a section to read:

21 Section 711.1. Payment of Tax for Small Business
22 Transfers.--(a) Notwithstanding the provisions of section 711,
23 the inheritance tax due under this act on the transfer of a
24 small business interest may be paid by the qualified transferee
25 over the five (5) year period IN CONSECUTIVE QUARTERLY <—
26 INSTALLMENTS BEGINNING immediately following the expiration of
27 nine (9) months after the decedent's death, according to the
28 following schedule:

29 (1) For decedents dying during the first year following the
30 effective date of this section, the tax may be paid in four (4)
31 CONSECUTIVE quarterly installments. <—

32 (2) For decedents dying during the second year following the
33 effective date of this section, the tax may be paid in eight (8)
34 CONSECUTIVE quarterly installments. <—

35 (3) For decedents dying during the third year following the
36 effective date of this section, the tax may be paid in twelve
37 (12) CONSECUTIVE quarterly installments. <—

(4) For decedents dying during the fourth year following the effective date of this section, the tax may be paid in sixteen (16) CONSECUTIVE quarterly installments.

(5) For decedents dying during the fifth and subsequent years following the effective date of this section, the tax may be paid in twenty (20) CONSECUTIVE quarterly installments.

(b) The tax shall be paid in CONSECUTIVE quarterly installments due on March 31, June 30, September 30 and December 31 of each year, provided the return required by section 703 is timely filed, along with a notice of election executed by the qualified transferee and joined in by the personal representative which shall relieve the personal representative or other fiduciary of liability for the collection and payment of tax under section 741. Such notice of election shall be completed on a form prescribed by the department containing at least the following information:

(1) The name of the decedent and date of death.

(2) The name or names of the personal representative or
other fiduciary.

(3) The name or names of the qualified transferees filing
the election.

(4) A description and estimated valuation of the business
interest on which tax is due.

(5) A statement that the qualified transferees assume full
personal responsibility for the tax.

Each notice of election shall be affirmed before an officer empowered to administer oaths. The installment payment of tax shall bear interest at the rate of nine (9) percent per annum.

(c) In the event any portion of a small business interest on
which the installment payment of tax has been elected is sold,

exchanged or otherwise disposed of prior to the expiration of five (5) years following the date of death and such portion equals or exceeds fifty (50) percent of the total value of the small business interest received by the qualified transferee, such transferee shall immediately provide written notice of the sale, exchange or disposition to the Department of Revenue and the full amount of the tax then outstanding on such portion shall become due and payable at the expiration of sixty (60) days following the date of sale, exchange or other disposition.

(d) For purposes of this section, the term "small business interest" shall mean an interest in a ~~business~~ AN OPERATING TRADE OR BUSINESS ENTITY THE PRINCIPAL PURPOSE OF WHICH IS NOT THE MANAGEMENT OF INVESTMENTS OR INCOME PRODUCING ASSETS OWNED BY THE ENTITY which has employed an average of less than fifty (50) full-time employees during the twelve (12) months immediately preceding the date of death and which meets one of the following criteria:

(1) An interest as a proprietor in a trade or business carried on as a proprietorship.

(2) An interest as a partner in a partnership carrying on a trade or business if:

(i) Twenty (20) percent or more of the total capital interest in such partnership is included in determining the gross estate of the decedent; or

(ii) Such partnership had ten (10) or less partners.

(3) Stock in a corporation carrying on a trade or business if:

(i) Twenty (20) percent or more in value of the voting stock of such corporation is included in determining the gross estate of the decedent; or

1 (ii) Such corporation had ten (10) or less shareholders.

2 (e) For purposes of this section, the term "qualified
3 transferee" shall mean a legatee or other transferee receiving:

4 (1) Ten (10) percent OR MORE of the value of a <—
5 proprietorship qualifying as a small business interest as
6 defined in subsection (d);

7 (2) Ten (10) percent or more of the total capital interest
8 in a partnership qualifying as a small business interest as
9 defined in subsection (d); or

10 (3) Ten (10) percent or more in value of the voting stock of
11 a corporation qualifying as a small business interest as defined
12 in subsection (d).

13 Section 2. Section 741 of the act, amended January 20, 1968
14 (1967 P.L.1031, No.451), is amended to read:

15 Section 741. Deduction and Collection of Tax.--Subject to
16 the provisions of [section] sections 711.1 and 718, every
17 personal representative, or other fiduciary (other than a
18 trustee of a pension, stock-bonus, profit-sharing, retirement
19 annuity, deferred compensation, disability or death benefit, or
20 other employe benefit plan) in charge of or in possession of any
21 property, or instruments evidencing ownership thereof, the
22 transfer of which is subject to a tax imposed by this act other
23 than a tax on a future interest not yet delinquent, shall deduct
24 the tax from the property, if money, or shall collect the tax
25 from the transferee. Any delivery of property or instruments by
26 such fiduciary to a transferee except in accordance with a
27 decree of distribution of the court, or pursuant to a duly
28 executed notice of election filed under section 711.1, shall not
29 relieve him of personal liability for a tax imposed by this act.
30 No personal representative or other fiduciary in charge of or in

1 possession of any property subject to this act shall be
2 compelled to pay or deliver it to the transferee except upon
3 payment to him of the tax due thereon other than tax on a future
4 interest not yet delinquent. If such transferee neglects or
5 refuses to pay the tax, the personal representative or other
6 fiduciary may sell the property subject to the tax, or so much
7 thereof as is necessary, under direction of the court. All money
8 retained by the personal representative or other fiduciary, or
9 paid to him on account of the taxes imposed by this act, shall
10 be remitted by him before the tax becomes delinquent, or if
11 received thereafter, shall be remitted by him promptly upon its
12 receipt.

13 Section 3. This act shall take effect in 60 days.