

INHERITANCE TAX

CHAPTER 185.

[H. B. No. 143—Owens.]

TAXATION OF INHERITANCES, ETC.

AN ACT Providing for Taxation and Fixing the Rate on Taxation of Inheritances, Devises, Bequests, Legacies and Gifts and Providing for the Manner of Payment and the Manner of Enforcing the Payment Thereof.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. TAX TRANSFERS, EXCEPTIONS.] A tax shall be and is hereby imposed upon the transfer of any property or any interest therein or income therefrom in trust or otherwise, to any person, association, or corporation not hereinafter exempt, in the following cases:

1. When the transfer is by will or by the interstate laws of this state from any person dying possessed of the property while a resident of the state.

2. When the transfer is by will or interstate law, of property within this state or within its jurisdiction whether the ownership of or interest in such property be evidenced by certificate of stock or bonds of foreign or of domestic corporations and the decedent was a non-resident of the state at the time of his death.

3. When the transfer is of property made by a resident or by a non-resident when such non-resident's property is within this state or within its jurisdiction by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor, or doner or intended to take effect in possession or enjoyment at or after such death.

Provided, however, that no tax shall be imposed upon any tangible personal property of a resident decedent when such property is located without this state, and when the transfer of such property is subject to inheritance or transfer tax in the state where located and which tax has actually been paid; *provided* further that such property is not without this state temporarily nor for the sole purpose of deposit or safe keeping; and providing the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state.

§ 2. RATES AND EXEMPTIONS.] Upon the transfer of prop-

erty in any manner hereinbefore described of the value of one hundred thousand (\$100,000.00) dollars or less the rate of tax on all sums above the first twenty thousand (\$20,000.00) dollars where the same shall pass to or for the use of the husband or wife and on all sums above the first ten thousand (\$10,000.00) dollars where the same shall pass to or for the use of the father, mother, lineal descendant, adopted child, or lineal descendant of an adopted child shall be one per centum; and on all sums above the value of one hundred thousand dollars up to two hundred and fifty thousand (\$250,000.00) dollars so transferred to any such person, the rate shall be two per centum and on all sums above two hundred and fifty thousand (\$250,000.00) dollars up to five hundred thousand (\$500,000.00) the rate shall be two and one half per centum, and on all sums above five hundred thousand (\$500,000.00) dollars the rate shall be three per centum.

Upon the transfer of property in any manner hereinbefore described of the value of twenty-five thousand (\$25,000.00) dollars or less on all sums above the first five hundred dollars (\$500.00) where the same shall pass to or for the use of a brother or a sister of the decedent a wife or widow of a son or the husband of a daughter of the decedent, the rate of taxation shall be one and one-half per centum; and on all sums above twenty-five thousand (\$25,000.00) dollars up to fifty thousand (\$50,000.00) dollars, where the same shall pass to any such person the rate shall be two and one-fourth per centum and on all sums above fifty thousand (\$50,000.) dollars up to one hundred thousand (\$100,000.00) dollars three per centum; and on all sums above one hundred thousand (\$100,000.) dollars up to five hundred thousand (\$500,000.00) dollars, three and three-fourths per centum and all sums above five hundred thousand (\$500,000.00) dollars, four and one-half per centum.

Upon the transfer of property in any manner hereinbefore described of the value of twenty-five thousands (\$25,000.00) dollars or less where the same shall pass to or for the use of any person who shall be the brother or sister of the father or mother or a descendent of the brother or sister of the father or mother or the descendent the rate of taxation shall be three per centum; and on all sums above twenty-five thousand (\$25,000.00) dollars up to fifty thousand (\$50,000.00) dollars, passing to any such person the rate shall be four and one-half per centum and on all sums above fifty thousand (\$50,000) dollars up to one hundred thousand (\$100,000.00) dollars, six per centum and on all sums above one hundred thousand (\$100,000.00) dollars, seven and one-half per centum, and on all sums above five hundred thousand (\$500,000.00) dollars, nine per centum.

Upon the transfer of property in any manner hereinbefore described of the value of twenty-five thousand (\$25,000.00) dollars or less, where the same shall be for the use of any person in any other degree of collateral consanguinity than is hereinbefore stated, or to a transfer in blood of the decedent, or to a body politic or corporate, the rate of taxation shall be five per centum; and on all sums above twenty-five thousand (\$25,000) dollars up to fifty thousand (\$50,000.00) dollars, to any such person the rate shall be six per centum, and on all sums above fifty thousand (\$50,000) dollars up to one hundred thousand (\$100,000) dollars nine per centum, and on all sums above one hundred thousand (\$100,000.) dollars up to five hundred thousand (\$500,000) dollars twelve per centum, and on all sums above five hundred thousand dollars (\$500,000) fifteen per centum.

Upon the transfer of property in any manner hereinbefore described to or for the use of collateral relations or strangers in blood who are aliens not residing in the United States, or to or for the use of any corporation which is not chartered by the authority of the government of the United States or of any state, a tax of twenty-five per centum shall be levied and collected.

§ 3. TIME OF TAKING EFFECT.] All taxes imposed by this Act shall take effect at and upon the death of the decedent or doner and shall be due and payable at the expiration of one (1) year from such death except as otherwise provided in this Act; *provided*, however, that taxes on any devise, bequest, legacy or gift limited, conditioned, dependent, or determinable upon the happening or any contingency or future event by reason of which the full and true value thereof cannot be ascertained at or before the time when the taxes become due and payable when the person or corporation beneficially entitled thereto shall come into actual possession or enjoyment thereof.

§ 4. DUTY OF OFFICERS.] Any administrator, executor, or trustee having in charge or in trust any property for distribution embraced in or belonging to any inheritance devise, bequest, legacy or gift, subject to the tax thereon as imposed by this Act, shall deduct the tax therefrom, and within thirty (30) days thereafter he shall pay over the same to the county treasurer as herein provided.

If such property be not in money he shall collect the tax in such inheritance, devise, bequest, legacy or gift upon the appraised value thereof from the person entitled thereto.

He shall not deliver or be compelled to deliver any property embraced in any inheritance, devise, bequest, legacy or gift, subject to tax under this Act, to any person until he shall have collected the tax thereon.

§ 5. TO WHOM PAID.] The tax imposed by this Act upon inheritances, devises, bequests, legacies or gifts, shall be paid to the treasurer of the county in which the court having jurisdiction, as herein provided, is located; and the tax so imposed shall be payable to the state treasurer as hereinafter provided and the treasurer to whom the tax is paid shall give the executor, administrator, trustee or person paying such tax duplicate receipts therefor, one of which shall be immediately transmitted to the state auditor whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof; and when such tax is paid to the county treasurer he shall seal said receipt with the seal of his office and countersign the name and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts.

No executor, administrator, or trustee shall be entitled to a final accounting of an estate, in the settlement of which a tax may become due under the provisions of this Act until he shall produce a receipt so sealed and countersigned or a certified copy of the same. All taxes paid into the county treasury under the provisions of this Act shall immediately be paid into the state treasury upon the warrant of the state auditor and shall belong to and be a part of the revenue fund of the state. *Provided*, however, that the county treasurer of each county shall retain two (2) per cent of the amount of all taxes paid and accounted for by him under this Act and pay the same into the general fund of such county.

§ 6. LIEN ON PROPERTY.] Every tax imposed by this Act shall be a lien upon the property embraced in any inheritance, devise, bequest, legacy or gift until paid, and the person to whom such property is transferred, and the administrators, executors, and trustees or every estate embracing such property shall be personally liable for such tax until its payment to the extent of the value of such property.

§ 7. RATE OF INTEREST.] If such tax is not paid within one year from the accruing thereof, interest shall be charged and collected thereon at the rate of seven (7) per centum per annum from the time the tax is due, unless by reasons of claims upon the estate necessary litigation or other unavoidable cause of delay, such tax can not be determined as herein provided; in such case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which seven (7) per centum shall be charged.

§ 8. ENFORCEMENT.] Every administrator, executor, or trustee shall have full power to sell so much of the property embraced in any inheritance, devise, bequest, legacy or gift as will enable him to pay the tax imposed by this Act,

in the same manner as he might be entitled by law to do for the payment of the debts of a testator or intestate.

§ 9. DUTY OF HEIRS.] If any bequest or legacy shall be charged upon or payable out of any property, the heir or devisee shall deduct such tax therefrom and pay such tax to the administrator, executor or trustee, and the tax shall remain a lien or charge on such property until paid; and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the bequest or legacy might be enforced, or by the state's attorney or attorney general, under Section 21 of this Act. If any bequest or legacy shall be given in money to any person for a limited period the administrator, executor or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him to make an apportionment, if the case requires of the sum to be paid into his hands by such legatee or beneficiary, and for such further order relative thereto as the case may require.

§ 10. ERRORS, HOW CORRECTED.] When any tax imposed by this Act shall have been erroneously paid, wholly or in part, the person paying the same shall be entitled to a refundment of the amount so erroneously paid, and the auditor of state shall, upon satisfactory proofs presented to him of the facts relating thereto, draw his warrant upon the state treasurer for the amount thereof, in favor of the person entitled thereto; *provided*, however that all applications for such refunding of erroneous taxes shall be made within three (3) years from the payment thereof, and be approved by the court having original jurisdiction of the matter.

§ 11. FOREIGN ESTATES.] If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state, standing in the name of the decedent or in trust for the decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county on the transfer thereof and no such assignment or transfer shall be valid until such tax is paid.

§ 12. DUTIES OF HOLDERS OF ASSETS, ETC.] No safety deposit company, bank or other institution, person or persons holding securities or assets of a decedent, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended transfer be served upon the county treasurer, personally or by representative, and state tax commission, to examine said securities at the time of such delivery or transfer. If upon such examination, the county treasurer and state tax

commission or their representatives shall for any cause deem it advisable that such securities or assets should not be immediately delivered or transferred, or they may forthwith notify in writing such company, bank, institution or person to defer delivery or transfer thereof for a period not to exceed ten (10) days from the date of such notice, and thereupon it shall be the duty of the party notified to defer such delivery or transfer until the time stated in such notice or until the revocation thereof within such ten (10) days. Failure to serve the notice first above mentioned, or to allow such examination or to defer the delivery of such securities or assets for the time stated in the second of said notices shall render said safety deposit company, trust company, bank or other institution, person or persons, liable to the payment of the tax due upon the said security or assets, pursuant to the provisions of this Act.

§ 13. PETITION CITATION AND ORDER.] Upon the presentation of any petition to any county court of this state for letters testamentary or of administration, or for ancillary letters testamentary or of administration, the court shall cause a copy of the citation or order for the hearing of such petition to be served upon the county treasurer of his county not less than ten (10) days prior to such hearing. The court shall thereupon, as soon as practicable after the granting of any such letters, proceed to ascertain and determine the value of every inheritance, devise, bequest, legacy, or gift embraced in or payable out of the estate in which such letters are granted and the tax due thereon.

The county treasurer shall have the same rights to apply for letters of administration as are conferred upon creditors by law.

§ 14. APPRAISERS.] The county court shall, in any matter mentioned in the preceding Section, either upon its own motion or upon the application of any interested party, including county treasurers, and as often as and when occasion requires, appoint one or more persons as appraisers to appraise the true and full value of the property embraced in any inheritance, devise, bequest, legacy or gift subject to the payment of any tax imposed by this Act.

§ 15. HOW APPRAISED.] Every inheritance, devise, bequest, legacy or gift upon which a tax is imposed under this Act, shall be appraised at its full and true value immediately upon the death of decedent, or as soon thereafter as may be practicable.

Provided, however, that when such devise, bequest, legacy, or gift shall be of such a nature that its full and true value cannot be ascertained at such time, it shall be appraised in like manner at the time such value first becomes ascertainable.

§ 16. DUTIES OF APPRAISERS, FEES AND COMPENSATION.] The appraiser appointed under the provisions of this Act shall forthwith give notice by mail to all persons known to have a claim or interest in the inheritance, devise, bequest, legacy, or gift to be appraised, including the county treasurer and state tax commission, and such persons as the county court may by order direct of the time and place when they will make such appraisal.

They shall at such time and place appraise the same at its full and true value as herein prescribed, and for that purpose the said appraisers are authorized to issue subpoenas and compel the attendance of witnesses before them, and to take evidence of such witnesses, under oath, concerning such property and the value thereof, and they shall make report thereof, and of such value, in writing to said court, together with the testimony of the witnesses examined and such other facts in relation thereto and to the said matter as said court may order to and require. Every appraiser shall be entitled to compensation at the rate of three (\$3.00) dollars per day for each day actually and necessarily employed in such appraisal, and his actual and necessary traveling expenses, and such witnesses and the officer or person serving any such subpoenas shall be entitled to the same fees as allowed witnesses or sheriffs for similar service in courts of record. The compensation and fees claimed by any person for services performed under this Act shall be approved by the judge of county court, who shall certify the amount thereof, to the auditor of state, who shall examine the same, and, if found correct, he shall draw his warrant upon the state treasury for the amount thereof in favor of the person entitled thereto.

§ 17. REPORT OF APPRAISERS.] The report of the appraisers shall be filed in duplicate with the county court, and from such report and other proof relating to any such estate before the county court, the court shall, forthwith, as of course, determine the true and full value of all such estate and the amount of tax to which same are liable; or the county court may so determine the full and true value of all such estates and the amount of tax to which the same are liable without appointing appraisers; *provided*, however, a duplicate of such report and appraisement shall be forthwith forwarded by the court to the state tax commission.

§ 18. PENALTY.] Any appraisers appointed under this Act who shall take any fee or reward from any person, representative, firm or corporation liable to pay said tax or any portion thereof, shall be guilty of a misdemeanor, and shall be forthwith dismissed by the county judge from such services.

§ 19. NOTICE OF TAX.] The county court shall immediately give notice, upon the determination of the value of any inheritance, devise, bequest, legacy or gift which is taxable under this Act, and of the tax to which it is liable, to all parties known to be interested therein, including the state tax commission and county treasurer.

§ 20. RE-ASSESSMENT.] Within thirty (30) days after the assessment and determination by the county court of any tax imposed by this Act, the state tax commission, county treasurer, or any person interested therein, may file with said court objections thereto, in writing, and praying for a re-assessment and redetermination of such tax. Upon any objection being so filed, the court shall appoint a time for the hearing thereof and cause notice of such hearing to be given the state tax commissioner, county treasurer, and all persons interested at least ten (10) days before the hearing thereof. At the time appointed in such notice the court shall proceed to hear such objections, and any evidence which may be offered in support thereof or opposition thereto; and, if, after such hearing, said court shall be of the opinion that a re-assessment or redetermination of such tax should be made it shall, by order, set aside the assessment and determination theretofore made, and order a re-assessment in the same manner as if no assessment had been made.

§ 21. DUTY OF STATE'S ATTORNEY.] If the treasurer of any county shall have reason to believe that any tax is due and unpaid under this Act after the refusal or neglect of the persons liable therefor to pay the same he shall notify in writing the state's attorney of his county of said failure or neglect, and such state's attorney, if he have probable cause to believe that such tax is due and unpaid, shall apply to the county court for a citation, citing the persons liable to pay such tax to appear before the court on a day specified not more than three (3) months from the day of such citation, and show cause why the tax should not be paid. The judge of the county court, upon such application and whenever it shall appear to him that any such tax accruing under this Act has not been paid, as required by law, shall issue such citation and the service of such citation, and the time, manner and proof thereof, and the hearing and determination thereof shall conform as near as may be to the provisions of the Probate Code of this state; and whenever it shall appear that any such tax is due and payable and the payment thereof cannot be enforced under the provisions of this Act in said county court the person or corporation from whom the same is due is hereby made liable to the state for the amount of such tax, and it shall be the duty of the state's attorney of the proper county, and the attorney gen-

eral of the state, to sue for in the name of the state, and enforce the collection of such tax, and all the taxes so collected shall be forthwith paid into the county treasury. It shall be the duty of the state's attorney to appear for and represent the county treasurer on the hearing of such citation.

§ 22. RECORDS, HOW KEPT.] The auditor of state shall furnish to each county court a book which shall be a public record and in which shall be entered by the judge or clerk of said court the name of every decedent upon whose estate an application has been made for the issue of letters of administration, or letters testamentary or ancillary letters, the date and place of death of such decedent, names and places of residence and relationship to decedent of the heirs at law of such decedent, the estimated value of the property of such decedent, names and places of residence and relationship to decedent of the heirs at law of such decedent, the names and places of residence of the legatees, devisees and other beneficiaries in any will of any such decedent, the amount of the legacy, and the estimated value of any property devised therein and to whom devised.

These entries shall be made from data contained in the papers filed on such application or in any proceeding relating to the estate of the decedent.

The judge or clerk shall also enter in such book the amount of property of any such decedent, as shown by the inventory thereof, when made and filed in his office, and the returns made by any appraisers appointed by him under this Act, and the value of all inheritances, devises, bequests, legacies and gifts inherited from such decedent, or given by such decedent in his will or otherwise as fixed by the court, and the tax assessed thereon, and the amount of any receipts for payment thereof filed with him.

The state auditor shall also furnish forms for the reports to be made by such judge, which shall correspond with the entries in such book.

§ 23. REPORTS OF OFFICERS.] Each judge of the county court shall on the first day of January, April, July and October of each year, make a report in duplicate upon the forms furnished by the state auditor containing all data and matters required to be entered in such book, one of which shall be immediately delivered to the county treasurer and the other transmitted to the state tax commission.

The register of deeds of each county shall, at the same time, make reports in duplicate to the auditor of state, containing a statement of any conveyance filed or recorded in his office of any property which appears to have been made or intended to take effect in possession or enjoyment after the death of the grantor or vendor or vendee, and the de-

scription of the property transferred, as shown by such instrument, one of which duplicates shall be immediately delivered to the county treasurer and the other transmitted to the state tax commission.

§ 24. EXEMPTION.] All bequests and devises of property within this state when the same is for one of the following charitable purposes, namely, the relief of aged, indigent and poor, maintenance of sick or maimed or for the support or education of orphans or indigent children, shall be exempt from the payment of any tax under this law.

§ 25. REPEAL.] Chapter 10 of the Probate Code of the state of North Dakota, being Sections 8320, 8321, 8322, 8323, 8324, 8325, 8326, 8327, 8328, 8329, 8330, 8331, 8332, 8333, 8334, 8335, 8336, 8337, 8338 and 8339 of the Revised Codes of the state of North Dakota for the year 1905, and all Acts and parts of Acts of this state, relating to the taxation of inheritances, devises, legacies, bequests and gifts, so far as the same are inconsistent or in conflict with the provisions of this Act, are hereby repealed. *Provided*, however, that such repeal shall in no wise affect any suit, prosecution or court proceeding pending at the time this Act shall take effect, or any right which the state of North Dakota may have at the time of the taking effect of this Act, to claim a tax upon any property under any existing Act or Acts hereby repealed for which no proceedings have been commenced, and all appeals, rights of appeals in all suits pending or appeals from assessments of taxes made by appraisers' report, or orders fixing the tax or otherwise existing in this state at the time of taking effect of this Act.

§ 26. EMERGENCY.] Whereas, an emergency exists in the fact that the state of North Dakota has no adequate inheritance tax law, and that the operation of this Act will be required before July 1st, A. D. 1913; therefore, this Act shall take force and effect from and after its passage and approval.

Approved March 15, 1913.