

CHAPTER 209—H. F. No. 491.

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An Act to amend sections three, eleven, thirteen, fourteen, fifteen, sixteen, eighteen and nineteen of chapter 288, General Laws 1905, entitled "An Act providing for taxation of and fixing the rate of taxation on inheritances, devises, bequests, legacies and gifts and providing for the manner of payment as well as the manner of enforcing payment thereof;" prescribing additional rules for the imposition of such tax; imposing certain powers and duties with reference to the enforcement and collection of such tax on the Attorney General and directing the payment of a certain percentage of the tax collected to the counties in which collected.

Be it enacted by the Legislature of the State of Minnesota:

When inheritance tax shall take effect.—Section 1. That section 3 of chapter 288, Laws 1905 be and the same is hereby amended so as to read as follows:

Section 3. All taxes imposed by this act shall take effect at and upon the death of the person from whom the transfer is made and shall be due and payable at the expiration of one year from such death, except as otherwise provided in this act.

The value of every future or limited estate, income, interest or annuity dependent upon any life or lives in being, shall be determined by the rule, method and standard of mortality and value employed by the commissioner of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies, except that the rate of interest for making such computations shall be five per centum per annum.

When any transfer is made in trust for any person or persons or corporation or corporations, and the right of the beneficiaries of said trust to receive the property embraced in said trust is susceptible of present valuation, then and in such case the tax thereon shall be paid at the same time and in the same manner, and in like amount, that would be the case if the beneficiaries of such trust received the same directly from the decedent or the persons from whom the property is transferred.

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting.

When property is transferred in trust or otherwise, and the rights, interest or estates of the transferee are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of said contingencies or conditions, would be pos-

sible under the provisions of this act, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred; *provided*, however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this act, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this article, with interest thereon at the rate of three per centum per annum from the time of payment. Such return of overpayment shall be made in the manner provided by section 21C; (section 9 of this act.)

In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made on account of any contingent incumbrance thereon, nor on account of any contingency upon the happening of which the estate or property, or some part thereof or interest therein might be abridged, defeated or diminished; *provided*, however, that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary or in the event of the abridgment, defeat or diminution of said estate or property, or interest therein, as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax on account of the incumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section 21C; (section 9 of this act.)

Where any property shall, after the passage of this act, be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interests is derived.

The tax on any devise, bequest, legacy, gift or transfer limited, conditioned, dependent or determinable upon the happening of any contingency or future event, by reason of which the full and true value thereof cannot be ascertained as provided for by the provisions of this act at or before the time when the

taxes become due and payable as hereinbefore provided, shall accrue and become due and payable when the person or corporation beneficially entitled thereto shall come into actual possession or enjoyment thereof.

Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.

Tax of personal property owned by nonresident.—Sec. 2. That section 11 of said chapter 288 Laws of 1905 be and the same is hereby amended so as to read as follows:

Section 11. Sub-division 1. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligation in this state, standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the state treasurer on the transfer thereof, and no such assignment or transfer shall be valid until such tax is paid,

If any nonresident of this state dies owning personal property in this state, such property may be transferred or assigned by the personal representative of, or trustee for the decedent, only after such representative or trustee shall have procured a certificate from the attorney general consenting to the transfer of such property. Such consent shall be issued by the attorney general only in case there is no tax due hereunder; or in case there is a tax, when the same shall have been paid.

Any personal representative, trustee, heir or legatee of a non-resident decedent desiring to transfer property having its situs in this state may make application to the attorney general for the determination of whether there is any tax due to the state on account of the transfer of the decedent's property and such applicant shall furnish to the attorney general therewith an affidavit setting forth a description of all property owned by the decedent at the time of his death and having its situs in the State of Minnesota, the value of such property at the time of said decedent's death; also when required by the attorney general, a description of and statement of the true value of all the property owned by the decedent at the time of his death and having its situs outside the State of Minnesota, and also a schedule or statement of the valid claims against the estate of the decedent, including the expenses of his last sickness and funeral and the expenses of administering his estate. Such person shall also, on request of the attorney general, furnish to the latter

a certified copy of the last will of the decedent in case he died testate, or an affidavit setting forth the names, ages and residences of the heirs at law of the decedent in case he died intestate and the proportion of the entire estate of such decedent inherited by each of said persons, and the relation, if any, which each legatee, devisee, heir, or transferee sustained to the decedent or person from whom the transfer was made. Such affidavits shall be subscribed and sworn to by the personal representative of the decedent or some other person having knowledge of the facts therein set forth.

The statements in any such affidavits as to value or otherwise shall not be binding on the attorney general in case he believes the same to be untrue. From the information so furnished to him and such other information as he may have with reference thereto, the attorney general shall, with reasonable expedition, determine the amount of tax, if any, due to the state under the provisions of this act and notify the person making the application of the amount thereof claimed to be due. On payment of the tax so determined to be due or in case there is no tax due to the state, the attorney general shall issue a consent to the transfer of the property so owned by the decedent.

No corporation organized under the laws of the State of Minnesota shall transfer on its books any shares of its capital stock standing in the name of a nonresident decedent, or in trust for a nonresident decedent, without the consent of the attorney general first procured as hereinbefore provided for. Any corporation violating the provisions of this section shall be liable to the state for the amount of any tax due to the state on a transfer of any such shares of stock, and in addition thereto a penalty equal to ten per cent of the amount of such tax; to be recovered in a civil action in the name of and for the benefit of the state.

Any person aggrieved by the determination of the attorney general in any matter hereinbefore provided for, may, within twenty days thereafter appeal to the district court of Hennepin county, or Ramsey county, Minnesota, by filing with the attorney general a notice in writing setting forth his objections to such determination and that he appeals therefrom and thereupon within ten days thereafter the attorney general shall transmit the original papers and records which have been filed with him in relation to such application for consent, to the clerk of the district court to which the appeal shall have been taken, and thereupon said court shall acquire jurisdiction of such application and proceeding. Upon eight days notice given to the attorney general by the appellant, the matter may be brought on for hearing and determination by such court either in term time or vacation, at a general or special term of said court, or at chambers as may be directed by order of the court. The said court may de-

termine any and all questions of law and fact necessary to the enforcement of the provisions of this act according to its intent and purpose, and may by order direct the correction, amendment or modification or [of] any determination made by the attorney general.

On such hearing either party may introduce the testimony of witnesses and other evidence in the same manner and subject to the same rules which govern in civil actions. When necessary, the court may adjourn or continue its hearings from time to time, to enable the parties to secure the attendance of witnesses or the taking of depositions. Depositions may be taken and used in such proceedings in the same manner as is now provided by law for the taking of depositions in civil actions.

The attorney general and any person aggrieved by the order of the district court may appeal to the supreme court from any such order made by said courts, within the time and in the manner now provided by law for the taking of appeals from orders in civil actions.

Sub-division 2. No tax shall be imposed, however, upon any transfer of personal property within this state owned by a nonresident of this state at the time of his death, where by the laws of the state of the decedent's domicile, an inheritance, succession or transfer tax is imposed on transfers of personal property of decedents, provided the laws of such state exempt, or do not impose a tax upon transfers of personal property of residents of Minnesota having its situs in such state. It is hereby expressly declared that the inclusion in this act of the provisions of this subdivision is not an indispensable inducement to the passage of this act and if at any time the provisions of this subdivision shall be held to be unconstitutional, the other provisions of this act shall not be invalidated thereby.

Attorney general may apply for letters of administration.—

Sec. 3. That section 13 of said chapter 288, Laws of 1905 be and the same is hereby amended so as to read as follows:

Section 13. Upon the presentation of any petition to any probate court of this state for letters testamentary or of administration, or for ancillary letters, testamentary or of administration, the probate 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 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 or legacy embraced in or payable out of the estate in which such letters are granted and the taxes due thereon. The county treasurers of

the several counties, and the attorney general, shall have the same rights to apply for letters of administration as are conferred upon creditors by law.

Application for appraiser.—Sec. 4. That section 14 of said chapter 288, Laws of 1905 be and the same is hereby amended so as to read as follows:

Section 14. The probate court may, 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 the attorney general, and as often as and when occasion requires, appoint one or more impartial and disinterested persons as appraisers to appraise the true and full value of the property embraced in any inheritance, devise, bequest, or legacy, subject to the payment of any tax imposed by this act.

Appraisement of estate.—Sec. 5. That section 15 of said chapter 288, Laws 1905 be and the same is hereby amended so as to read as follows:

Section 15. Every inheritance, devise, bequest, legacy, transfer 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, transfer or gift shall be of such a nature that its true and full value cannot be ascertained, as herein provided, at such time, it shall be appraised in like manner at the time such value first becomes ascertainable.

Attorney general to be notified of appraisement.—Sec. 6. That section 16 of said chapter 288, Laws of 1905 be and the same is hereby amended so as to read as follows:

Section 16. The appraisers 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, attorney general, and such persons as the probate 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 probate court appointing said appraisers is authorized and empowered to issue subpoenas and compel the attendance of witnesses before such appraisers at the place fixed by the appraisers as the place where they will meet to hear such testimony and make such appraisal. Such appraisers may administer oaths or affirmations to such witnesses and require them to testify concerning any and all property owned by the decedent and the true value thereof and any disposition thereof which may have

been made by the decedent during his life time or otherwise. The appraisers shall make a report in writing, setting forth their appraisal of the property embraced in each legacy, inheritance, devise or transfer, including any transfer made in contemplation of death, with the testimony of the witnesses examined and such other facts in relation to the property and its appraisal as may be requested by the attorney general, or directed by the order of the probate court. Such report shall be in writing and one copy thereof shall be filed in the probate court and the others shall be mailed to the attorney general at his office in the city of St. Paul, Minnesota.

Every appraiser shall be entitled to compensation at the rate of \$3.00 per day, and in extraordinary cases such additional sum per day, not exceeding \$7.00 altogether as may be allowed by the probate judge, 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 subpoena shall be entitled to the same fees as are allowed witnesses or sheriffs for similar services 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 probate who shall certify the amount thereof, to the state auditor, 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.

Such warrants shall be paid out of the moneys appropriated for the payment of the expenses of inheritance tax collections.

Notice on attorneys.—Sec. 7. That section 18 of said chapter 288 of Laws 1905 be and the same is hereby amended so as to read as follows:

Section 18. The probate court shall immediately give notice, upon the determination of the value of any inheritance, devise, bequest, legacy, transfer or gift which is taxable under this act, and the tax to which it is liable, to all parties known to be interested therein, including the state auditor, attorney general and the county treasurer.

Such notice shall be given by serving a copy on the attorney of all persons who may have appeared by attorney, and as to persons who have not so appeared, by mail, where the addresses of the persons to be notified are known or can be ascertained, otherwise such notice shall be given by publishing said notice once in a qualified newspaper. The expense of such publication shall be certified and paid by the state treasurer in the same manner as hereinbefore provided for the payment of the fees and expenses of appraisers.

Notice of hearing.—Sec. 8. That section 19 of said chapter 288, Laws of 1905 be and the same is hereby amended so as to read as follows:

Section 19. Within thirty days after the assessment and determination by the probate court of any tax imposed by this act, the attorney general, county treasurer or any person interested therein, may file with said court objections thereto, in writing, and praying for a reassessment and redetermination of such tax. Upon any objection being so filed the probate court shall appoint a time for the hearing thereof and cause notice of such hearing to be given to the attorney general, county treasurer and all parties interested at least ten days before the hearing thereof. Such notice shall be served in the manner provided for in section 18 as amended by section 7 of this act.

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 reassessment or redetermination of such tax should be made, it shall, by order, set aside the assessment and determination theretofore made and order a reassessment in the same manner as if no assessment had been made, or the said court may, without ordering a resubmission to appraisers, set aside the assessment and determination theretofore made and fix and determine the value of the property embraced in any legacy, inheritance, devise or transfer and fix and determine the amount of the tax thereon in accordance with the appraisal theretofore filed, so far as the same is not in dispute, and in accordance with the evidence introduced by the respective parties in interest as to any items of the appraisers' report which may have been objected to by any party interested, including the attorney general and the personal representatives of the decedent.

In any case where objections are filed by the attorney general as hereinbefore provided for, he shall, within ten days before the time set by the court for the hearing thereof, file with the clerk of the court a bill of particulars setting forth the items in any such report objected to and as to which he proposes to offer testimony; he shall also mail a copy thereof, within said time, to the personal representative of the decedent or the attorney or attorneys for the latter. In case objections are filed by any other person, he or she shall likewise file such a bill of particulars with the court and serve a copy thereof upon the attorney general within ten days after the filing of the objections.

Attorney general may stipulate as to amount of tax to be paid—May designate an assistant in charge of inheritance tax matters.—Sec. 9. That said chapter 288, Laws of 1905 be further

amended by adding thereto six new and additional sections to be known as sections 21-A, 21-B, 21-C, 21-D, 21-E and 21-F, and which said sections shall read as follows:

Section 21-A. The attorney general, by and with the consent and approval of the state auditor, in case of the estate of a nonresident decedent whose estate has not been probated in this state, and the consent and approval of the probate judge in the case of any estate probated in this state, expressed in writing, is hereby authorized and empowered to enter into an agreement with the trustees of any estate in which remainders or expectant estates are of such a nature or so disposed and circumstanced that the taxes are not presently payable or where the interests of the legatees or devisees are or were not ascertainable under the provisions of this chapter, at the time fixed for the appraisal and determination of the tax on estates and interests transferred in fee, and to thereby compound the tax upon such transfers upon such terms as are deemed equitable and expedient; to grant a discharge to said trustees on account thereof upon payment of the taxes provided for in such composition agreement; *provided*, however, that no such composition shall be conclusive in favor of said trustees as against the interests of such cestui que trust as may possess either present rights of enjoyment, or fixed, absolute or indefeasible, rights of future enjoyment or of such as would possess such rights in the event of the immediate termination of any particular estate, unless they consent thereto either personally or by duly authorized attorney, when competent, or by guardian or committee. Composition agreements made, affected and entered into under the provisions of this section shall be executed in triplicate, and one copy thereof filed in the probate court of the county in which the tax is to be paid, one copy in the office of the attorney general and one copy shall be delivered to the persons paying the tax thereunder.

The attorney general shall not consent to the assignment or delivery of any property embraced in any legacy, devise or transfer from a nonresident decedent to a nonresident trustee thereof under the provisions of section 11, as amended by section 2 of this act, where the property embraced in such legacy, devise or transfer is so circumstanced and disposed of that the tax thereon cannot be presently ascertained, but is so circumstanced and disposed of as to authorize him to enter into a composition agreement with reference to the tax on any estate or interest therein as herein provided, until the tax on the transfer of any such estate or interest shall have been compounded and the tax paid as hereinbefore provided for; or in lieu thereof the trustee or other person to whom the possession of such property is delivered shall have made, executed and delivered to the attorney general, a bond to the State of Minnesota in an amount equal to the

amount of tax which in any contingency may become due and owing to the state on account of the transfer of such property, such bond to be approved by the attorney general and conditioned for the payment to the State of Minnesota of any tax which may accrue to the state under this act on the subsequent transfer or delivery of the possession of such property to any person beneficially entitled thereto. The provisions of sections 4523, 4524 and 4525, Revised Laws 1905 shall apply to the execution of said bond and the qualification of the surety or sureties thereon.

No property having its situs in this state embraced in any legacy or devise bequeathed or devised to a non-resident trustee and circumstanced or disposed of as last hereinbefore described, shall be decreed and distributed by any court of this state to such nonresident trustee until he shall have compounded and paid the tax as provided for in this section; or in lieu thereof given a bond to the state as provided for in this section with reference to transfers of property owned by nonresident decedents.

Section 21-B. The attorney general is hereby authorized and empowered to issue a citation to any person whom he may believe or have reason to believe has any knowledge or information concerning any property which he believes or has reason to believe has been transferred by any person and as to which there is or may be a tax due to the state under the provisions of this act, and by such citation require such person to appear before him at a time and place to be designated in such citation and testify under oath as to any fact or information within his knowledge touching the quantity, value and description of any such property and its ownership and the disposition thereof which may have been made by any person, and to produce and submit to the inspection of the attorney general, any books, records, accounts or documents in the possession of or under the control of any person so cited. The attorney general shall also have power to inspect and examine the books, records and accounts of any person, firm or corporation, including the stock transfer books of any corporation, for the purpose of acquiring any information deemed necessary or desirable by him for the proper enforcement of this act and the collection of the full amount of the tax which may be due to the state hereunder. Any and all information acquired by the attorney general under and by virtue of the means and methods provided for by this section shall be deemed and held by him as confidential and shall not be disclosed by him except so far as the same may be necessary for the enforcement and collection of the inheritance tax provided for by this act.

Refusal of any person to attend before the attorney general in obedience to any such citation, or to testify, or produce any books, accounts, records or documents in his possession or under

his control and submit the same to inspection of the attorney general when so required, may, upon application of the attorney general, be punished by any district court in the same manner as if the proceedings were pending in such court.

Witnesses so cited before the attorney general, and any sheriff or other officer serving such citation shall receive the same fees as are allowed in civil actions; to be paid by the attorney general out of the funds appropriated for the enforcement of this act.

Section 21-C. Whenever, under the provisions of section 3 of this act, as amended, any person or corporation shall be entitled to a return of any part of a tax previously paid, he shall make application to the attorney general for a determination of the amount which he is entitled to have returned, and on such application shall furnish the attorney general with affidavits and other evidence showing the facts which entitle him to such return and the amount he is entitled to have returned. The attorney general shall thereupon determine the amount, if any, which the applicant is entitled to have returned, and shall certify his findings in regard thereto to the state auditor who shall thereupon issue his warrant on the state treasurer for the amount so certified by the attorney general and deliver such warrant to the persons entitled to the refund.

It shall be the duty of the state treasurer to pay such warrants out of any funds in the state treasury not otherwise appropriated. The moneys necessary to pay such warrants are hereby appropriated out of any moneys in the state treasury not otherwise appropriated.

Any person aggrieved by the determination of the attorney general may appeal to the district court in the manner and with the same effect as is provided for in section 11 as amended by section 2 of this act.

Section 21-D. On or before the first of November in each year the state auditor shall compute the amount of inheritance tax which has been paid in to the state treasury by the county treasurers of the several counties of this state, from estates of residents thereof, during the preceding fiscal year ending July 31st, and thereupon draw his warrant on the state treasurer in favor of each county from which any tax shall have been received during the fiscal year ending July 31st next preceding, for ten per cent of the amount of the inheritance tax money so received from each such county respectively, less ten per cent of any tax which has been returned under the provisions of the last preceding section and which was originally paid to the county treasurer of any such county, and transmit the same to the county auditor of each county, to be placed to the credit of the county revenue fund; *provided*, however, that the provisions of

this section shall apply only to such moneys as shall be received as a tax on transfers from persons who shall die subsequent to the passage of this amendatory act.

It shall be the duty of the state treasurer to pay such warrants out of any funds in the state treasury not otherwise appropriated. The moneys necessary to pay such warrants are hereby appropriated out of any moneys in the state treasury not otherwise appropriated.

Section 21-E. The attorney general shall provide himself with a seal whereon shall be inscribed the words:

“Attorney General, State of Minnesota, Inheritance Tax.”

All his formal official acts done and performed under the provisions of this act shall be authenticated with such seal.

Section 21-F. The attorney general is hereby authorized to designate one of his assistants as “Assistant Attorney General in Charge of Inheritance Tax Matters.” Such designation shall be in writing and filed in the office of the secretary of state and shall continue in force until revoked by the attorney general. The assistant so designated, so long as such designation remains unrevoked, shall have and may exercise all the rights, powers and privileges conferred on the attorney general by the provisions of this act and all the duties and obligations hereby imposed upon the attorney general are likewise imposed upon the assistant so designated.

Sec. 10. This act shall take effect and be in force from and after its passage.

Approved April 18, 1911.

CHAPTER 210—H. F. No. 494.

An Act to legalize the foreclosure of mortgages by advertisement in this state and the record thereof where the notice of foreclosure sale and all other proceedings in the matter of such foreclosure were had pursuant to the requirements of law except that the notice of the foreclosure sale was only published for five or more successive weeks.

Be it enacted by the Legislature of the State of Minnesota:

Certain mortgage foreclosures legalized.—Section 1. Where any mortgage has been heretofore foreclosed by advertisement in this state and all the requirements of law in relation to such foreclosure have been had and taken pursuant to the requirements of law except that the notice of the mortgage foreclosure sale was only published for five or more successive weeks, the said