

**Proposed
Inheritance and Estate Tax Act
of 1959**

Second Report
of the
TASK FORCE ON DECEDENTS' ESTATES LAWS

General Assembly of the Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION

CAPITAL BUILDING

HARRISBURG, PA.

JOINT STATE GOVERNMENT COMMISSION

1957-1959

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INTRODUCTION

The Joint State Government Commission has undertaken a study of the inheritance and estate tax laws of this Commonwealth. This study grew out of a suggestion from the Attorney General.

Herewith is submitted a second interim report in the form of a Proposed Inheritance and Estate Tax Act of 1959, prepared by the Commission's Decedents' Estates Advisory Committee, and distributed to the bench, the bar, Commonwealth departments, and the public for their consideration.

While Pennsylvania was the first state to enact an inheritance tax act (1826, April 7, P. L. 227), the mechanics for imposing and collecting the tax have long remained in need of clarification. The advisory committee in the preparation of this draft of the Proposed Pennsylvania Inheritance and Estate Tax Act of 1959, and its prior draft, has sought to codify in readily understandable form existing statutory and case law, making changes only in those instances where experience has shown that present procedures are needlessly cumbersome to the taxpayer and unrewarding to the Commonwealth. No suggestions are made regarding change of tax rates; recommendations regarding exemptions and change of classifications were kept to a minimum.

The Commission and its advisors have been aided substantially in their work by Ralph S. Snyder, Deputy Attorney General, and Irvin Stander, Special Assistant Attorney General, and have received helpful suggestions and advice from many groups, among them the Inheritance Tax Committee of the Tax Section of the Pennsylvania Bar Association, the Pennsylvania Bankers Association, Philadelphia Trust Companies Committee, Philadelphia Bar Association Tax Committee, and Philadelphia Bar Association Orphans' Court Committee, as well as many individuals. However, this is a tentative draft of the act and cannot be construed, at this stage, as having either the endorsement of the Attorney General or of the groups above-mentioned. While substantial

work has gone into its preparation, the very nature of the act demands that it be critically examined by numerous groups having specialized knowledge of the subject, as well as by general practitioners, and that the Commission and its advisors be given the benefit of such criticism, remembering that highly controversial subjects in most instances should be avoided here and reserved for separate consideration.

Suggestions and recommendations regarding the Proposed Inheritance and Estate Tax Act of 1959 should be addressed promptly to the secretary of the advisory committee, M. Paul Smith, 60 East Penn Street, Norristown, Pa. The final meeting of the Advisory Committee to consider such suggestions and recommendations will be held February 26 and 27, 1959.

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Proposed

**Inheritance and Estate Tax Act
of 1959**

AN ACT

Providing for the imposition of certain taxes upon the transfer of property passing from a decedent who was a resident of the Commonwealth at the time of his death or presumed death and of property having its situs in the Commonwealth of a decedent who was a nonresident of the Commonwealth at the time of his death or presumed death; imposing additional taxes to equal Federal Estate Tax Credits; defining and taxing certain transfers made in contemplation of death, or to take effect in possession or enjoyment at or after death; defining as a transfer and taxing the right of survivorship in certain property as to which such right exists; defining and exempting from tax, transfers to certain persons or for certain purposes or of certain property; providing for the valuation of property and interests in property, the transfer of which is subject to taxes; defining and allowing deductions from the value of property, the transfer of which is subject to taxes; providing for the persons ultimately liable for taxes in the absence of a direction by the decedent to the contrary; providing for the reporting of transfers and collection of taxes; imposing penalties upon banks or other financial institutions for failure to give notice to the Department of Revenue of the death of a party to a joint or trust deposit therein and upon persons who fail to file tax returns and documents; providing for the compromise of taxes in the case of alleged nonresidents of the Commonwealth; making it unlawful for any person to make a false return or report; providing for liens upon real property, the transfer of which is subject to taxes, and release thereof; authorizing the Secretary of Revenue to bring suits in other jurisdictions for the collection of taxes, and authorizing officials of other

jurisdictions to bring suits in the Commonwealth for the collection of death taxes imposed by their jurisdictions; providing for the refund of taxes to which the Commonwealth is not rightfully or equitably entitled; providing for appeals and protests from the imposition of taxes; regulating the entry into safe deposit boxes of a decedent by certain persons, and providing penalties; dealing with the jurisdiction, powers and procedure of the orphans' court, Secretary of Revenue, Department of Revenue, Attorney General, and register of wills in matters relating to taxes; and citing certain acts for repeal.

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

ARTICLE I

PRELIMINARY PROVISIONS

SECTION 101. *Short Title.*—This Act shall be known and cited as the Inheritance and Estate Tax Act of 1959.

SECTION 102. *Definitions.*—The following words when used in this Act, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

(1) "Attorney General" includes all of his deputies and special assistants.

COMMENT. This is suggested by the Administrative Code, 71 PS §296. See also 71 PS §73.

(2) "Children" includes adopted children, stepchildren, illegitimate children of the mother, and the adopted children of the natural parent who marries the adopting parent. It does not include illegitimate children of the father nor adopted children in the natural family, except as above set forth.

COMMENT. This definition is in conformity with existing law regarding the rate of taxation:

(a) adopted children: Act of 1919, P. L. 521, §2; Statutory Construction Act, 46 PS §601.

(b) illegitimate children: Act of 1919, P. L. 521, §2; *Comm. v. Mackey*, 222 Pa. 613; *Lines's Est.*, 155 Pa. 378. See definition of lineal descendants, §102(11).

As to an adopted child, this definition conforms with the scheme of the 1947 Acts in making the adopted child the same as the natural child in the adopting family and taking him out of the natural family.

(3) "Clerk" means clerk of the orphans' court having jurisdiction.

COMMENT. This definition is the same as in the Fiduciaries Act of 1949, §102(1); Orphans' Court Act of 1951, §102(1); Register of Wills Act of 1951, §102(3); Incompetents' Estates Act of 1955, §102(1).

(4) "Court" means orphans' court of the county in which the decedent resided at the time of his death; or in the case of a nonresident of the Commonwealth, the orphans' court of the county in which letters, if any, are granted, otherwise, the Orphans' Court of Dauphin County.

COMMENT. This is suggested by Act of 1919, P. L. 521, §§13, 29. It represents two changes from existing law, which prescribes the Court of Common Pleas of Dauphin County as the appropriate forum in cases of nonresidents. This section attempts to consolidate all problems of administration whether tax or non-tax problems in one forum by designating the orphans' court of the county where letters have been granted; where no letters have been granted, it selects the Orphans' Court of Dauphin County as the forum, because that court deals more frequently with inheritance tax matters than does the Court of Common Pleas of Dauphin County.

(5) "Date of death" means the actual date of death, except in the case of a presumed decedent, when it means the date on which the court enters its final decree establishing the presumption of death, regardless of the date which is found by such decree to be the presumed date of the absentee's death, except that for the purpose of determining the applicable rate of tax, it means the date found by such decree to be the presumed date of the absentee's death.

COMMENT. This is in conformity with existing case law: *Michel Est.*, 14 D. & C. 2d 770, 9 Fiduc. Rep. 1; *Hahn's Est.*, 36 D. & C. 136.

Discount is thereby made available, and interest runs from the date of the decree, in the estates of presumed decedents.

(6) "Death taxes" means inheritance, succession, transfer and estate taxes, and any other taxes levied against the estate of a decedent by reason of his death.

(7) "Decedent" or "transferor" means any person by or from whom a transfer is made, and includes any testator, intestate, grantor, settlor, bargainer, vendor, assignor, donor, joint tenant, and insured.

COMMENT. This is suggested by Act of 1919, P. L. 521, §45. See also Statutory Construction Act, 46 PS §601.

(8) "Estate tax" means the tax imposed by Article IV, Parts B and C, of this Act.

(9) "Fiduciary" means executor, administrator, personal representative and trustee.

COMMENT. Other definitions of "fiduciary," which vary somewhat from the definition here stated, are found in Statutory Construction Act, 46 PS §601; Fiduciaries Act of 1949, §102(3) and Orphans' Court Act of 1951, §102(4).

(10) "Inheritance tax" means the tax imposed by Article IV, Part A of this Act.

(11) "Lineal descendants" includes children and their descendants, adopted descendants and their descendants, stepchildren, illegitimate descendants of the mother and their descendants, and the adopted children, and their descendants, of the natural parent who marries the adopting parent. It does not include descendants of stepchildren, illegitimate children of the father and their descendants nor adopted children and their descendants in the natural family, except as above set forth.

COMMENT. See §403(1) and comments thereto regarding rates of taxation on transfers to lineal descendants, and changes in existing law. See definition of children, Section 102(2). Among those included would be adopted children of children, children and adopted children of adopted children; also, when traced through their mother, whether or not she had been adopted into the family, children of illegitimate children.

(12) "Notice" means written notice.

(13) "Person" includes corporation, association, partnership and society (whether or not operated for profit) as well as a natural person, and includes such entities, whether acting in a separate or fiduciary capacity.

COMMENT. This is suggested by Estate Tax Apportionment Act of 1951, §1(1) and Statutory Construction Act, 46 PS §601.

(14) "Presumed decedent" means a person found to be presumptively dead under the provisions of Article XII of the Fiduciaries Act of 1949.

(15) "Property" or "Estate" includes the following:

COMMENT. This is suggested by Act of 1919, P. L. 521, §45.

(i) All real property and all tangible personal property of a resident decedent or transferor, having its situs in Pennsylvania;

COMMENT. This is declaratory of existing law and is suggested by Act of 1919, P. L. 521, §1 as amended: (1) Real property: *Webster's Est.*, 314 Pa. 233; *Craver's Est.*, 319 Pa. 282; (2) tangible personal property: see *Snodgrass' Est.*, 22 D. & C. 598.

(ii) All intangible personal property of a resident decedent or transferor;

COMMENT. This is suggested by Act of 1919, P. L. 521, §1 as amended.

(iii) All real property outside the Commonwealth, owned by a resident decedent, which the decedent had contracted to sell, provided the jurisdiction in which the real estate has its situs does not subject the real estate to death tax;

COMMENT. This changes existing case law: *Paul's Est.*, 303 Pa. 330. It is not intended to cause the taxation of such property where the will merely directs a sale: cf. *Robinson's Est.*, 285 Pa. 308; *Rambo's Est.*, 266 Pa. 520; *Williamson's Est.*, 153 Pa. 508; *Handley's Est.*, 181 Pa. 339.

(iv) All real property and all tangible personal property of a nonresident decedent or transferor having its situs in Pennsylvania, including such property held in trust;

COMMENT. This is suggested by Act of 1919, P. L. 521, §1(b) as amended.

(v) A liquor license issued by the Commonwealth of Pennsylvania.

COMMENT. This is intended to reverse the ruling in *Ryan Est.*, 375 Pa. 42. See *Imhof Est.*, 7 Fiduc. Rep. 567; *Barry Est.*, 8 Fiduc. Rep. 514; *Golonsky Est.*, 8 Fiduc. Rep. 521. The definition of a liquor license as "property" will include any partial interest therein: see *Chylak Est.*, 6 D. & C. 2d 210, 6 Fiduc. Rep. 192.

(16) "Register" means the register of wills having jurisdiction to grant letters testamentary or of administration in the estate of the decedent or transferor.

COMMENT. This is suggested by Fiduciaries Act of 1949, §102(5) and Orphans' Court Act of 1951, §102(3). For the inclusion of deputies within the meaning of "register", see Register of Wills Act of 1951, §202.

(17) "Resident" and "nonresident" mean domiciliary and nondomiciliary of the Commonwealth of Pennsylvania, respectively, at the date of death.

(18) "Secretary of Revenue" includes all of his deputies.

COMMENT. This is suggested by the Administrative Code, 71 PS §73.

(19) "Territory" includes the District of Columbia, and all possessions of the United States.

COMMENT. This is suggested by Act of 1929, P. L. 1258, §1, and Act of 1949, P. L. 1726, §2.

(20) "Transfer" includes the passage of ownership of any property, or any interest therein or income therefrom, in possession or enjoyment, present or future, in trust or otherwise.

COMMENT. This is suggested by Act of 1919, P. L. 521, §45.

(21) "Transferee" means any person to whom a transfer is made and includes legatees, devisees, heirs, next of kin, grantees, beneficiaries, vendees, assignees, donees, surviving joint tenants and insurance beneficiaries.

COMMENT. This is suggested by Act of 1919, P. L. 521, §45. See Section 102(7).

(22) "Value" means the price at which the property would be sold by a willing seller, not compelled to sell, to a

willing buyer, not compelled to buy, both of whom have reasonable knowledge of the relevant facts.

COMMENT. This is suggested by Federal Estate Tax Regulation §20.2031-1(4)(b) (T.D. 6296 filed June 23, 1958). See section 507 for an exception to the rule here stated.

SECTION 103. *Effective Date.*—This Act shall take effect on the first day of January, one thousand nine hundred sixty, and shall apply to:

- (1) The estates of all decedents dying on or after that day;
- (2) Inter vivos transfers made by decedents dying on or after that day regardless of the date of the transfer.

The existing laws shall remain in full force and effect for the estates of all decedents dying before that day.

COMMENT. See Comment to Section 401 regarding the rate of tax applicable to inter vivos transfers, and Section 102(5) regarding the rate of tax on estates of presumed decedents.

SECTION 104. *Powers of Secretary of Revenue; Regulations.*—The Secretary of Revenue shall have complete supervision of the making of appraisements, the allowance of deductions, and the assessment of tax. He shall have the power to adopt and enforce rules and regulations for the just administration of this Act.

COMMENT. This is in conformity with existing law, and is suggested by Act of 1927, P. L. 727, §1, as amended.

SECTION 105. *Severability.*—If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby, and to this end the provisions of this Act are declared to be severable.

COMMENT. This is suggested by Fiduciaries Act of 1949, §106; Estates Act of 1947, §18; Orphans' Court Act of 1951, §104; Register of Wills Act of 1951, §104. Cf. Act of 1919, P. L. 521, §46.

ARTICLE II

TRANSFERS SUBJECT TO TAX

A. In General

SECTION 201. *Imposition of Tax.*—An inheritance tax for the use of the Commonwealth is hereby imposed upon every transfer subject to tax under this Act at the rates hereinafter specified.

COMMENT. This is suggested by Act of 1919, P. L. 521, §2.

B. Transfers By Will and Intestacy

SECTION 211. *Will or Intestacy; Resident.*—All transfers of property as defined in this Act, by will or by the intestate laws of the Commonwealth, from a resident of this Commonwealth are subject to tax under this Act.

COMMENT. This is suggested by Act of 1919, P. L. 521, §1(a).

SECTION 212. *Will or Intestacy; Nonresident.*—All transfers of property as defined in this Act, by will, by the intestate laws of the Commonwealth, or by the laws of succession of another jurisdiction from a nonresident are subject to tax under this Act.

COMMENT. This is suggested by Act of 1919, P. L. 521, §1(b).

SECTION 213. *Presumed Decedent.*—The transfer of property of a person determined by decree of a court of competent jurisdiction to be a presumed decedent is subject to tax under this Act within the meaning of Sections 211 and 212.

COMMENT. This is in conformity with existing law: *Millar Est.*, 356 Pa. 56. See Section 102(5) concerning the date of death in the case of a presumed decedent, and Section 102(14) for definition of presumed decedent.

C. Inter Vivos Transfers

SECTION 221. *Consideration; Quantum of Taxable Transfer.*—

(a) *Consideration.*—All transfers of property, specified in Sections 222-226, which are made during his lifetime by a

resident or a nonresident, to the extent that they are made without valuable and adequate consideration in money or money's worth at the time of transfer, are subject to tax under this Act.

COMMENT. This is suggested by Act of 1919, P. L. 521, §1(c), as amended by Act of 1929, P. L. 1795, §1; compare Act of 1939, P. L. 721, §1. Existing case law taxes such transfers only to the extent their value exceeds the consideration: *Wilson's Est.*, 40 D. & C. 468.

(b) *Quantum of Taxable Transfer.*—When the decedent retained or reserved an interest or power with respect to only a part of the property transferred, in consequence of which a tax is imposed under Sections 223-226, the amount of the taxable transfer hereunder is only that portion of the property so transferred which is subject to such retained or reserved interest or power.

COMMENT. This subsection is in conformity with existing law and will subject to tax only that portion of the transfer which is subject to decedent's reserved rights.

SECTION 222. *Contemplation of Death.*—A transfer conforming to Section 221(a) and made in contemplation of the death of the transferor is subject to tax under this Act. A transfer shall not be deemed or held to have been made in contemplation of death if made more than two years prior to the death of the transferor, but, unless shown to the contrary, shall be deemed to have been in contemplation of death if it is of a material part of the transferor's estate and is made within two years prior to the death of the transferor.

A transfer is made in contemplation of death when the dominant or impelling motive, but not necessarily the sole motive of the transferor was prompted by the thought of death, without which motive the transfer would not have been made. The term is not restricted to that expectancy of imminent death which actuates the mind of a person making a gift *causa mortis*.

COMMENT. This is suggested by Act of 1919, P. L. 521, §1(c), as amended by Act of 1929, P. L. 1795, §1. The period of the existence of the rebuttable presumption of a transfer made in contemplation of death is increased from one year to two years. All gifts made more than

two years prior to death are conclusively presumed not to be made in contemplation of death. Under existing law there is no date beyond which the Commonwealth may not allege the transfer to be taxable under the contemplation of death doctrine. The definition of a transfer made in contemplation of death is suggested by *U. S. v. Wells*, 283 U.S. 102, and *Est. of Johnson*, 10 T.C. 680.

SECTION 223. *Deferred Possession and Enjoyment; Reservation of Reversionary Interest.*—A transfer conforming to Section 221 (a) which:

- (1) takes effect in possession or enjoyment at or after the death of the transferor, and
- (2) under which the transferor has retained a reversionary interest in the property, the value of which interest immediately before the death of the transferor exceeds five percent of the value of the property transferred,

is subject to tax under this Act. The term “reversionary interest” includes a possibility that property transferred may return to the transferor or his estate, or may be subject to a power of disposition by him, but such term does not include a possibility that the income alone from such property may return to him or become subject to a power of disposition by him.

COMMENT. This is suggested by Act of 1919, P. L. 521, §1(c), and 1954 I.R.C. §2037. See *DuBois' Ap.*, 121 Pa. 368; cf. *Com. v. Linderman's Est.*, 340 Pa. 289.

SECTION 224. *Reservation of Life Interest.*—A transfer conforming to Section 221 (a) and under which the transferor expressly or impliedly reserves for his life or any period which does not in fact end before his death:

- (1) the possession or enjoyment of, or the right to the income from, the property transferred, or
- (2) the right, either alone or in conjunction with any person, not having an adverse interest, to designate the persons who shall possess or enjoy the property transferred or the income therefrom,

is subject to tax under this Act.

COMMENT. This is in conformity with existing case law: *Todd Trust*, 358 Pa. 530; *Glosser Trust*, 355 Pa. 210; cf. *Stone Est.*, 81 D. & C. 60.

The term "impliedly" is intended to confirm the rule of *Jones Est.*, 350 Pa. 120, re reciprocal trusts, but does not change the rule in *Krause's Est.*, 325 Pa. 479, where the transferor did not reserve any interest in the property transferred, but received an annuity from the transferee.

SECTION 225. *Promise by Transferee.*—A transfer conforming to Section 221 (a) and under which the transferee promises to make payments to, or for the benefit of, the transferor or to care for the transferor during the remainder of the transferor's life is subject to tax under this Act.

COMMENT. This is in conformity with existing case law: *Armstrong Est.*, 3 D. & D. 2d 285, 5 Fiduc. Rep. 406. See Section 635 for deduction of indebtedness arising from contracts herein described. The provisions of Section 305 would save from tax a transfer here described where the transferee is a charity: Cf. *Krause's Est.*, 325 Pa. 479.

SECTION 226. *Revocable and Tentative Trusts.*—A transfer conforming to Section 221 (a) and under which the transferor has at his death, either in himself alone, or in conjunction with any other person not having an adverse interest, a power to alter, amend or revoke the interest of the beneficiary, is subject to tax under this Act. Similarly, the relinquishment of such a power in contemplation of death, within the meaning of Section 222, is a transfer subject to tax. For the purposes of this section, "adverse interest" means a substantial beneficial interest in the property transferred which might be adversely affected by the exercise or nonexercise of the power possessed.

COMMENT. Compare *Dolan's Est.*, 279 Pa. 582 with *Todd Trust*, 358 Pa. 530; I.R.C. §2038. The treatment of tentative trusts is consistent with existing case law: *Rodgers Est.*, 374 Pa. 246. Section 303 makes it clear that the power to designate or change the beneficiary of an insurance trust does not result in taxation of the insurance proceeds.

The definition of "adverse interest" is suggested by Section 672 of the Internal Revenue Code of 1954.

D. Joint Tenancy

SECTION 241. *Joint Tenancy*.—When any property is held in the names of two or more persons, or is deposited in a bank or other institution or depository in the names of two or more persons, so that upon the death of one of them the survivor or survivors have a right to the immediate ownership or possession and enjoyment of the whole property, the accrual of such right upon the death of one of them shall be deemed a transfer subject to tax under this Act, of a fractional portion of such property to be determined by dividing the value of the whole property by the number of joint tenants in existence immediately preceding the death of the deceased joint tenant. This section shall not apply to property and interests in property passing by right of survivorship to the survivor of husband and wife. If the co-ownership was created in contemplation of death within the meaning of Section 222 of this Act, the entire interest so transferred shall be subject to tax only under Section 222 as though a part of the estate of the person who created the co-ownership.

COMMENT. This is suggested by Act of 1929, P. L. 1795, §1 as amended by Act of 1936, First Ex. Sess., P. L. 44, §2 and Act of 1949, P. L. 1083, §1. See Section 311 regarding property owned by husband and wife with right of survivorship.

ARTICLE III

TRANSFERS NOT SUBJECT TO TAX

SECTION 301. *Governments*.—Transfers of property to or for the use of any of the following are exempt from inheritance tax:

1. The United States of America;
2. The Commonwealth of Pennsylvania;
3. A political subdivision of the Commonwealth of Pennsylvania.

COMMENT. This is suggested by Act of 1919, P. L. 794, §1 as amended by Act of 1931, P. L. 553, §1 and Act of 1939, P. L. 724, §1. The exemption of transfers to the United States of America is a change in existing law, but is not required: *U.S. v. Perkins*, 163 U.S. 625.

SECTION 302. *Charities*.—Transfers of property to or for the use of any of the following are exempt from inheritance tax:

1. Any corporation, unincorporated association or society organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;
2. Any trustee or trustees, or any fraternal society, order, or association operating under the lodge system, but only if the property so transferred is to be used by the trustee or trustees, or by the fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, and no substantial part of the activities of the trustee or trustees, or of the fraternal society, order, or association, is carrying on propaganda, or otherwise attempting, to influence legislation;
3. Any veterans' organization incorporated by Act of Congress or its departments or local chapters or posts, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

COMMENT. This is suggested by Act of 1955, P. L. 1757, §1 and Act of 1957, P. L. 821, §1. Clause (1) is intended to embrace a gift to establish such an organization: see *LeFevre Est.*, 233 N.Y. 138. Property bequeathed for free exhibition is embraced within the exemption here created: see Act of 1919, P. L. 794, §1; Act of 1931, P. L. 553, §1; Act of 1939, P. L. 724, §1. The effect of this section and section 305 is to extend the free exhibition exemption to inter vivos transfers: cf. *Hermann Est.*, 349 Pa. 230.

SECTION 303. *Life Insurance*.—All proceeds of insurance on the life of the decedent, unless payable to the estate

of the decedent, are exempt from inheritance tax. Proceeds payable to an inter vivos or testamentary trustee or other beneficiary designated in the decedent's will or in an inter vivos instrument of transfer are exempt from inheritance tax within the meaning of this section.

COMMENT. This changes existing case law in so far as proceeds payable to a beneficiary designated in decedent's will would not be subjected to tax: *Myers's Est.*, 309 Pa. 581; cf. *Hemingway Est.*, 8 Fiduc. Rep. 356. In view of the policy enunciated in the Estates Act of 1947, §8, Act of 1957, P. L. 792, the rule announced in *Myers's Est.*, supra, should be altered expressly; its retention would constitute a trap for those unwary persons who might rely upon Section 8 of the Estates Act as resolving the question.

The life insurance feature in an accident insurance policy is life insurance within the meaning of this section: *Stark's Est.*, 43 Lanc. 417.

SECTION 304. *War Risk Insurance.*—All proceeds of any Federal War Risk Insurance, National Service Life Insurance or similar governmental insurance, unless payable to the estate of the decedent, are exempt from inheritance tax. Proceeds payable to an inter vivos or testamentary trustee or other beneficiary designated in the decedent's will or in an inter vivos instrument of transfer are exempt from inheritance tax within the meaning of this section.

COMMENT. Present law exempts from inheritance tax all proceeds of war risk insurance, whether or not payable to decedent's estate: *Beall Est.*, 384 Pa. 14; *Wanzel's Est.*, 295 Pa. 419. However, there is no requirement that such property be exempt from inheritance taxation: *U.S. Trust Co. v. Helvering*, 307 U.S. 57.

SECTION 305. *Inter Vivos Transfers to Exempt Donee.*—Inter vivos transfers, as defined in Sections 221-226, which might otherwise be subject to inheritance tax are exempt where the transferee is a governmental body as defined in Section 301 or a charity as defined in Section 302.

COMMENT. This section is unnecessary in view of the definition of "transfer," as the term is used in Sections 301 and 302, but is included in an abundance of caution. It is in no way intended to derogate from the meaning of "transfer" as used in this Act.

SECTION 306. *Intangibles of Nonresident.*—Intangible personal property held by, for or for the benefit of a decedent

who at the time of his death was a nonresident is exempt from inheritance tax.

COMMENT. This changes existing law, under which intangibles of nonresidents were taxed unless the nonresident's domicile either failed to tax tangibles of Pennsylvanians or granted them an exemption conditioned upon reciprocity: *Johnson's Est.*, 333 Pa. 193; Act of 1929, P. L. 1258, §1. Very few states subject such property to tax without having in their laws a reciprocal provision; the change regarding nonresidents of the United States is, therefore, more significant.

SECTION 307. *Advancements.*—A transfer made as an advancement of or on account of an intestate share, or in satisfaction or partial satisfaction of a gift by will, but not in contemplation of death within the meaning of Section 222 of this Act, is exempt from inheritance tax.

COMMENT. This is in conformity with existing case law: *Barbey's Est.*, 34 Berks 155; *Heistand's Est.*, 44 D. & C. 244. The exception in the case of advancements in contemplation of death is also in conformity with existing law: Act of 1919, P. L. 521, §1(c).

SECTION 308. *Adjusted Service Certificates and Service Bonds.*—Adjusted service certificates issued under Act of Congress of May 19, 1924 (38 USCA §591, et seq.) and adjusted service bonds issued under Act of Congress of January 27, 1936 (38 USCA §686, et seq.) are exempt from inheritance tax.

COMMENT. This is in conformity with existing case law: *Schmuckli's Est.*, 341 Pa. 36 (adjusted service bonds); *Smith's Est.*, 8 D. & C. 639 (adjusted service certificates).

SECTION 309. *Appointed Property.*—Property subject to a power of appointment, whether or not such power is exercised, and notwithstanding any blending of such property with the property of the donee, is exempt from inheritance tax in the estate of the donee of the power of appointment.

COMMENT. This is in conformity with existing law: Act of 1929, P. L. 1795, §1. See Section 408 of this Act. Section 226 will be applicable to reserved powers of appointment.

SECTION 310. *Commonwealth.*—Property awarded to the Commonwealth of Pennsylvania as statutory heir, by escheat, or without escheat, otherwise than as custodian for

a known distributee, is exempt from inheritance tax. Inheritance tax shall be deducted at the applicable rate without interest from any such exempt funds thereafter distributed by the Commonwealth.

COMMENT. This is in conformity with existing law, and clarifies the question of the time and manner of the collection of tax: *Cannon Est.*, 6 Fiduc. Rep. 421; *Opinion of Attorney General*, 1 Fiduc. Rep. 59.

"Otherwise than as custodian for a known distributee" makes it clear that such awards to the Commonwealth as custodians are subject to immediate payment of the tax imposed by this Act. See Act of 1953, P. L. 674; Fiduciaries Act of 1949, §737; Fiscal Code, §1314, 72 PS §1314.

SECTION 311. *Husband and Wife*.—Property owned by husband and wife with right of survivorship is exempt from inheritance tax. If such ownership was created in contemplation of death within the meaning of Section 222 of this Act, the entire interest so transferred shall be subject to tax only under Section 222.

COMMENT. This is suggested by Act of 1929, P. L. 1795, §1(e), as amended by Act of 1936, First Ex. Sess., P. L. 44, §2 and Act of 1949, P. L. 1083, §1. The exception in the case of creation of such ownership in contemplation of death is in conformity with existing law: Act of 1936, First Ex. Sess., P. L. 44, §2; *Carson Est.*, 352 Pa. 304; *Cowan Est.*, 78 D. & C. 543; *Reynolds' Est.*, 23 D. & C. 421.

The phrase "with right of survivorship" is not intended to require that the form of ownership be expressly stated to be with right of survivorship on the face of any instrument denoting the ownership, but embraces such ownership whether the express designation is actually a tenancy by the entireties or a joint tenancy with right of survivorship. See Section 241.

This section will apply to U. S. Government bonds in "or" registration inasmuch as this type of registration under Federal Regulations includes rights of survivorship.

SECTION 312. *Nominal Ownership*.—Property held in the name of a decedent who had no beneficial interest therein is exempt from inheritance tax.

SECTION 313. *Obligations Worthless at Death*.—Obligations owing to the decedent which are worthless immediately before death are exempt from inheritance tax although collectible from the obligor's distributive share of the estate.

COMMENT. This is in conformity with existing case law: *Townsend Est.*, 65 Montg. 215.

SECTION 314. *Social Security Death Payment.*—The lump-sum death payment from The United States Social Security Administration or payment made in lieu thereof by another agency of the United States, although paid to the decedent's estate, is exempt from inheritance tax.

COMMENT. The exemption of Social Security payments to cover funeral expenses is in conformity with existing case law: cf. *Christensen Est.*, 11 D. & C. 2d 485, 7 Fiduc. Rep. 240. The reference to "another agency" is intended to provide a similar exemption to such payments as those made by the Veterans' Administration on behalf of veterans: Vet. Reg. 9(a) (II), 38 USCA Ch. 12A. For Social Security "death payment," see 42 USCA §402(i).

SECTION 315. *Railroad Retirement Burial Benefit.*—The lump-sum burial benefit from the United States Railroad Retirement Board, although paid to the decedent's estate, is exempt from inheritance tax.

COMMENT. There appears to be no reason to distinguish the burial benefit under this act (45 USCA §228e(f)(1)) from that under Social Security. Benefits beyond the burial benefit paid to the decedent's estate are not exempted by this section: cf. *Fleming Est.*, 2 D. & C. 2d 425, 5 Fiduc. Rep. 382.

SECTION 316. *Employment Benefits.*—Payments under pension, stock-bonus or profit-sharing plans, to distributees designated by decedent or designated in accordance with the terms of the plan, other than the estate of the decedent, are exempt from inheritance tax to the extent that decedent before his death did not otherwise have the right to possess (including proprietary rights at termination of employment), enjoy, assign or anticipate the payments so made. The proceeds of life insurance otherwise exempt under Section 303 shall not be subject to inheritance tax because they are being paid under a pension, stock-bonus or profit-sharing plan.

COMMENT. This conforms with existing law: *Dorsey Est.*, 366 Pa. 557; *Cameron Est.*, 8 Fiduc. Rep. 195, 8 Fiduc. Rep. 600; *Inheritance Tax—Profit Sharing Funds*, 6 Fiduc. Rep. 93; *Burke & Enbody Estates*, 85 D. & C. 49, 3 Fiduc. Rep. 344; *Hoelzel Est.*, 101 Pitts. L. J. 77.

The exemption "to the extent that decedent before his death did not otherwise" have possessory rights is intended to enable the separation of the several components of the type of funds involved in *Burke & Enbody Estates*, supra, and to prevent "assign" from being interpreted as including the right to designate the beneficiary of such funds.

ARTICLE IV

RATE OF TAX

A. Inheritance Tax

SECTION 401. *Method of Computation of Tax; Residents.*—When the decedent was a resident, the tax shall be computed upon the value of the property, in excess of the deductions hereinafter specified, at the rates in effect at the transferor's death.

COMMENT. Taxation of all transfers at the rates in effect at the transferor's death is a departure from existing law: *Denniston's Est.*, 325 Pa. 453; *Leffmann's Est.*, 312 Pa. 236; *Oliver's Est.*, 273 Pa. 400. However, there is no constitutional objection to applying a different rate of tax: *Milliken v. U.S.*, 283 U.S. 15; *Cahan v. Brewster*, 203 U.S. 543. Concerning the taxation of transfers at the transferor's death, regardless of the date of transfer, see Section 103 and comment thereto.

See Section 102(5) for rate applicable in the case of a presumed decedent.

This section is not intended to abrogate the rule of *Camp's Est.*, 298 Pa. 405, and its language is not to be taken as authorizing the apportionment of deductions.

SECTION 402. *Method of Computation of Tax; Non-residents.*—When the decedent was a nonresident, the tax shall be computed upon the value of real property and tangible personal property having its situs in Pennsylvania, in excess of property taxes assessed thereon and any indebtedness for which it is liened, mortgaged or pledged, at the rates in effect at the transferor's death; provided that the person liable to make the return under Section 701 may choose to compute the tax upon the value of such property, but only upon that portion in excess of the deductions specified in this Act and only at the rates in effect at the transferor's death, as if the decedent were a resident and his entire estate were property

having its situs in Pennsylvania, and the tax due in such event shall be that amount which bears the same ratio to the tax computed as the real estate and tangible personal property located in Pennsylvania bears to the total taxable estate of such decedent.

COMMENT. This is suggested by Act of 1919, P. L. 521, §32, amended by Act of 1923, P. L. 1078, §5, but is altered in accordance with Section 306 of this Act, and is intended to simplify the payment of tax in the estates of nonresidents.

SECTION 403. *Rate of Tax; Class A.*—Inheritance tax upon the transfer of property passing to or for the use of any of the following shall be at the rate of two (2) percent:

1. Grandfather, grandmother, father, mother, husband, wife, and lineal descendants;

COMMENT. The taxation of transfers to grandparents at the lower rate changes existing law: *McDowell v. Addams*, 45 Pa. 430; See Act of 1951, P. L. 1713, §1.

The taxation of transfers to father, mother, husband, and wife is in conformity with existing law: Act of 1919, P. L. 521, §2.

The present Act divides transferees into "Class A" and "Class B", rather than "lineals" and "collaterals". "Class A" is substantially the same as "lineals" and "Class B" is substantially the same as "collaterals".

"Lineal descendants" is defined in Section 102(11). Transfers to adopted children and their descendants are taxed under existing law at the lower rate: Act of 1956, P. L. 1525, §2. It is not deemed necessary to qualify "adopted" by the term "legally." The taxation of transfers to adopted children of adopted children at the lower rate changes existing law. Stepchildren are taxable at the lower rate under existing law (Act of 1919, P. L. 521, §2), and the taxation of transfers to descendants of stepchildren at the higher rate also conforms with existing law: *Pancoast's Est.*, 1 D. & C. 488. Illegitimate children are treated in conformity with existing law: Act of 1919, P. L. 521, §2; *Com. v. Mackey*, 222 Pa. 613.

2. Wife or widow, and husband or widower, of children.

COMMENT. The taxation of transfers to sons-in-law at the lower rate changes existing law: *Paul's Est.*, 1 D. & C. 231.

The daughter-in-law is taxed at the lower rate under existing law: Act of 1919, P. L. 521, §2. As under existing law, a transfer to the wife or widow of a grandson is not a transfer to the daughter-in-law

of the decedent: *Stokes's Est.*, 20 W.N.C. 48; nor is a transfer to a remarried daughter-in-law a transfer to the "widow" of the son: *Com. v. Powell*, 51 Pa. 438.

SECTION 404. *Rate of Tax; Class B.*—Inheritance tax upon the transfer of property passing to or for the use of all other persons than those designated in Section 403, shall be at the rate of fifteen (15) percent.

COMMENT. This is in conformity with existing law (Act of 1919, P. L. 521, §2, as amended) except for the changes made in Section 403, and except for the omission of the provision made by Act of 1943, P. L. 863 for an 80 percent tax upon transfers to first cousins and relatives more remote when the transfer is by the intestate law and distribution is after seven years. Such provision would cover only transfers to first cousins and it would seem that there would be no purpose in making provision for this small class. The Act of 1943 was apparently directed toward the *Garrett Estate* (371 Pa. 284; 372 Pa. 438) situation only, and has served its purpose.

SECTION 405. *Rate of Tax; Joint Interests.*—When property passes to or for the use of a husband and wife with right of survivorship, one of whom is taxable at the rate provided in Section 403 and the other of whom is taxable at the rate provided in Section 404, the rate of tax imposed by Section 403 shall be applied to the entire interest.

COMMENT. This changes existing law: *Zipperlein Est.*, 367 Pa. 622 (taxing one-half at 2 percent and one-half at 10 percent). But see *Uhrich Est.*, 7 D. & C. 2d 126, 6 Fiduc. Rep. 295, which indicated that the higher rate of tax could be avoided by renunciation. This section creates an automatic renunciation for purposes of the rate of taxation, in conformity with the spirit of Section 406, and thus does not place at a disadvantage those who are not cognizant of the possibility of a renunciation.

SECTION 406. *Renunciation of Transfer.*—When any person entitled to a distributive share of an estate, whether under an inter vivos trust, a will, or the intestate law, renounces his right to receive the distributive share within three months after the grant of letters, or within one year after the death of the decedent, whichever first occurs, receiving therefor no consideration, the tax shall be computed as though the persons who benefit by such renunciation were

originally designated to be the distributees, conditioned upon an adjudication or decree of distribution expressly confirming distribution to such distributees. In such case, notice of the filing of the account and of its call for audit or confirmation shall include notice to the Department of Revenue. When an unconditional vesting of a future interest does not occur at the decedent's death, the renunciation specified herein of the future interest may be made within three months after the occurrence of the event or contingency which resolves the vesting of such interest in possession and enjoyment.

COMMENT. This is in conformity with existing case law as to renunciation of legacy: *Bute Est.*, 355 Pa. 170; *Uhrich Est.*, 7 D. & C. 2d 126, 6 Fiduc. Rep. 295. The renunciation may be of a part, as well as of the whole, interest: *Bronstein Est.*, 86 D. & C. 150, 3 Fiduc. Rep. 585. It changes existing law regarding the renunciation of an intestate share: *Bomberger's Est.*, 47 D. & C. 627. See Estates Act of 1947, §3, for method of renunciation.

SECTION 407. *Compromise of Rights.*—In case of a compromise of a dispute regarding rights and interests of transferees, made in good faith, the tax shall be computed as though the persons so receiving distribution were originally entitled thereto as transferees of the property received in the compromise, conditioned upon an adjudication or decree of distribution expressly confirming distribution to such distributees. In such case, notice of the filing of the account and of its call for audit or confirmation shall include notice to the Department of Revenue.

COMMENT. This is in conformity with existing case law: *Hawley's Est.*, 214 Pa. 525; *Pepper's Est.*, 159 Pa. 508; *Avery's Est.*, 34 Pa. 204. The section will be applicable to inter vivos as well as testamentary transfers.

SECTION 408. *Powers of Appointment.*—Property subject to a power of appointment, whether or not such power is exercised, and notwithstanding any blending of such property with the property of the donee, shall be taxed only as part of the estate of the donor.

COMMENT. This is in conformity with existing law: Act of 1929, P. L. 1795, §1; *Morris' Est.*, 42 D. & C. 522. See Section 309.

B. Estate Tax—Residents

SECTION 421. *When Federal Credit Not Exhausted.*—

In the event that a Federal estate tax is payable to the United States on the estate of a decedent who was a resident of the Commonwealth at the time of his death, and the inheritance tax, if any, paid to the Commonwealth (disregarding interest or the amount of any discount allowed under Section 716 of this Act), plus the death taxes (not including any death tax expressly imposed to receive the benefit of the credit for state death taxes allowed by the Federal estate tax law) paid to other states or territories in respect to the property of the decedent, is less than the maximum credit for state taxes allowed by the Federal estate tax law, a tax equal to such difference is hereby imposed.

COMMENT. This is suggested by Act of 1927, P. L. 859, as amended. Present law allows credit against the estate tax for all death taxes of other states, whereas this section will restrict such credit only to death taxes not designed to absorb the Federal credit. Thus in the case of a resident of Pennsylvania who is also subjected to a death tax such as that imposed by Florida, the Pennsylvania estate tax is imposed without credit for any of the tax paid to Florida, whose tax is one in the amount of the Federal credit. It is consistent with existing law as amended by Act of 1943, P. L. 864, §1, to reverse *Com. v. Davis' Est.*, 345 Pa. 284. The exclusion of interest on inheritance tax in the calculation is in conformity with existing law: *Williams Est.*, 8 Fiduc. Rep. 274.

C. Estate Tax—Nonresidents of United States

SECTION 431. *When Federal Credit Not Exhausted.*—

In the event that a Federal estate tax is payable to the United States on the estate of a decedent who was not a resident of the United States or its territories at the time of his death, and the inheritance tax, if any, paid to the Commonwealth (disregarding interest or the amount of any discount allowed under Section 716 of this Act) is less than the maximum credit for state taxes allowed by the Federal estate tax law, a tax is hereby imposed, to be computed by deducting the Pennsylvania inheritance tax, if any, paid as aforementioned from an amount which bears the same ratio to the maximum

credit for state taxes allowed by the Federal estate tax law, as the transfer of property subject to inheritance tax under this Act and included in the decedent's gross estate for Federal estate tax purposes bears to the decedent's gross estate located within the United States and its territories for Federal estate tax purposes.

COMMENT. This is in conformity with existing law, which imposes an estate tax upon residents of Pennsylvania and nonresidents of the United States: Act of 1927, P. L. 859, as amended. See *Treichler v. Wisc.*, 338 U.S. 251 and *Frick v. Pa.*, 268 U.S. 473.

D. Estate Tax—General

SECTION 441. *Additional Inheritance Tax After Payment of Estate Tax; Credit.*—When an inheritance tax imposed under Sections 401-408 of this Act is imposed after an estate tax imposed under Sections 421 or 431 of this Act has been paid, the estate tax so paid shall be credited against any inheritance tax later imposed.

COMMENT. This is suggested by Act of 1947, P. L. 1091, §2; cf. *Heberton Est.*, 351 Pa. 564.

ARTICLE V

VALUATION

A. Valuation

SECTION 501. *Valuation Date; Property Valued; In General.*—For the purpose of this Act, except as hereinafter expressly provided, the valuation date shall be the date of the transferor's death. When the transfer was made during lifetime and was not in trust, the property transferred shall be valued at the transferor's death. When the transfer was to an inter vivos trust, the property to be valued shall be that comprising the portion of the trust, if any, which exists at the transferor's death, and which portion is traceable from property, the transfer of which is subject to tax under this Act.

COMMENT. The first sentence is in conformity with existing law: *Ashbridge's Est.*, 59 Montg. 66; *McKee's Est.*, 64 Pitts. L. J. 120.

See Section 506 for the valuation date in cases where the tax on a future interest is prepaid. It is intended to value property transferred in contemplation of death, as well as other inter vivos transfers, as of the date of death: *Cowan Est.*, 78 D. & C. 543; *Bietsch's Est.*, 22 D. & C. 600; cf. *Scheidt's Est.*, 41 D. & C. 533. Where the property is transferred outright, the property is valued at the date of death even though no longer in the transferee's possession. Cf. *Humphrey v. Commissioner*, 162 F. (2d) 1. However, where the transfer is made in trust, the corpus, as composed at the date of death, is valued without regard to changes occurring after the transfer. As to both types of transfer, however, improvements or additions made by the transferee will be disregarded as also will be property arising from income accumulated after the transfer was made. *Gidwitz v. Commissioner*, 196 Fed. (2d) 813; *McGehee v. Commissioner*, C.A. 5, August 18, 1958, 58-2 U.S.T.C. Para. 11,817.

SECTION 502. *Valuation of Life Interest.*—The value of a life interest shall be determined in accordance with the Mortality Table presently appearing as Table 38, Makehamized, in the volume entitled United States Life Tables and Actuarial Tables, 1939-1941, published by the United States Department of Commerce, Bureau of Census (1946), with interest at the rate of three and one-half (3½) percent per year, compounded annually.

COMMENT. This represents a change in existing practice which uses special tables to be found in C.C.H. Inheritance, Estate and Gift Tax Reporter. Vol. 4, pp. 81,143 and 81,144 (5 percent interest in valuing life estates, and 4 percent interest in valuing fixed annuities). See *Reynolds Est.*, 359 Pa. 616.

The table here adopted is the same as the table currently used for Federal estate tax purposes.

SECTION 503. *Valuation of Interest for Term Certain.*—The value of an interest for a term certain shall be determined on the basis of interest at the rate of three and one-half (3½) percent per year compounded annually.

COMMENT. This section is necessary because Section 502 will not embrace valuation of an interest here described, as for example a 10 year right to payments in fixed amounts or to the income from an asset.

SECTION 504. *Valuation of Limited Estate: Yearly Income.*—In determining the present value of a life interest

or an interest for a term certain, other than payments in fixed amounts, the yearly income, or the annual value of the use or income, of such interest, shall be considered equivalent to three and one-half ($3\frac{1}{2}$) percent of the appraised value for inheritance tax purposes of the property upon which the interest is based.

COMMENT. This section states an arbitrary rule for practical reasons. Thus the net rental produced by real estate in which there is created a limited interest is presumed to be $3\frac{1}{2}$ percent of the appraised value of the realty. It should be noted that such appraised value will be based in part upon consideration of net return, so that the result of this section is not to unrealistically underestimate the income from the property.

General Comment Re Sections 502 and 504.—Under Section 504, it is assumed that income will be produced by property at the rate of $3\frac{1}{2}$ percent per year. Thus a fund of \$100,000 will produce \$3,500 yearly income.

Section 502 determines the value of a right to the life income from property, and combines with the mortality factor a computation valuing the right to future income at $3\frac{1}{2}$ percent interest compounded annually. Thus a life tenant, aged 50, in a property worth \$100,000, is the transferee of an estate having a present worth of $\$3,500 \times 14.6087$, or \$51,130.45. The factor 14.6087 is taken from Table 38 for a life beneficiary at age 50.

SECTION 505. *Annuity or Life Estate Terminated Within Year of Decedent's Death.*—If an annuity or a life estate is terminated by the death of the annuitant or life tenant or by the happening of a contingency within one year after the death of the transferor, the value of the annuity or estate shall be the value, at the date of the transferor's death, of the amount of the annuity or income actually paid or payable to the annuitant or life tenant during the period he was entitled to the annuity or was in possession of the estate. If an appraisal of an annuity or life estate has been filed before such termination, the appraisal, and any assessment based thereon, shall be revised, in accordance with this Section, upon request of any party in interest, including the Commonwealth and the personal representative, insofar as such appraisal, and any assessment based thereon, relates to the valuation of such terminated annuity

or life estate, without the necessity of such party in interest following the procedure described in Article X of this Act.

COMMENT. This represents a change in existing law: *Rowell's Est.*, 315 Pa. 181; *Kelley Est.*, 5 D. & C. 2d 1, 6 Fiduc. Rep. 72. The last sentence is deemed necessary to prevent any requirement that the personal representative file a protest or formal appeal in every case where an annuity or life estate is included in an appraisement filed more than sixty days before the first anniversary of the decedent's death.

SECTION 506. *Valuation Date; Future Interest.*—Except as otherwise expressly provided in this Act, the valuation date of a transfer of any interest in property to take effect in possession and enjoyment after the expiration of one or more interests for a term of years, for life, or for other limited period, shall be the date such interest takes effect in possession and enjoyment. The tax shall be computed upon the value of the interest at such date. Except as otherwise expressly provided, when the tax on the future interest is paid prior to its taking effect in possession and enjoyment, the tax shall be computed upon the value of the interest in property at the applicable date specified in Section 713 or 714, diminished by the then value of the preceding limited estates or estate, as determined under the appropriate sections of this Article.

COMMENT. This section should be considered in connection with Section 661.

SECTION 507. *Valuation of Property Subject to Option or Agreement; Closely Held Business Interest.*—When a decedent's property is subject, during his lifetime and at the time of his death, to a binding option or agreement to sell, the appraised value thereof shall not exceed the amount of the established price payable therefor, provided the option or agreement is a bona fide arrangement and not a device to transfer such property for less than an adequate and full consideration in money or money's worth.

COMMENT. This is suggested by Federal Estate Tax Regulation §§20.2031-3 and 20.2031-2(h) (T.D. 6296, filed June 23, 1958). It changes existing law: *McClure Est.*, 347 Pa. 520.

ARTICLE VI DEDUCTIONS

A. In General

SECTION 601. *In General.*—The only deductions from the value of the property transferred shall be those set forth in this Article. They shall be deductible regardless of whether or not assets comprising the decedent's taxable estate are employed in their payment or discharge, except that when a tax is imposed upon a transfer described in Sections 221-241, such deductions shall be allowed to the transferee only to the extent that the transferee has actually paid the deductible items and either (1) the transferee was legally obligated to pay the deductible items, or (2) the estate subject to administration by a personal representative is insufficient to pay the deductible items.

COMMENT. Transfers to charities are exempt under the provisions of Section 302, and those to certain governments under Section 301. Thus this Article does not recognize any charitable or public deductions, except in so far as Section 638 is necessary where the transfer to charity is effectuated by reason of decedent's debt.

The second sentence changes existing law (see *Christensen Est.*, 11 D. & C. 2d 485, 7 Fiduc. Rep. 240, and cases discussed therein, including especially *Kritz Est.*, 387 Pa. 223).

B. Expenses—Deductible

SECTION 611. *Administration Expenses.*—All reasonable expenses of administration of the decedent's estate and of the assets includible in the decedent's taxable estate shall be deductible.

COMMENT.—This is declaratory of existing law: Act of 1919, P. L. 521, §2. Administration expenses include, but are not limited to, letters testamentary or of administration; estate notices; inventory; fees of appraisers, witnesses, personal representative and attorney; short certificates; affidavits; fees for account and adjudication; public liability insurance premium (*Anderson Est.*, 77 D. & C. 74, 1 Fiduc. Rep. 449); stock transfer stamps; registered mail charges; certified copies of will; fees for recording instruments; bank charges for supervision of entry into safe deposit boxes under Section 1111 of this Act;

and costs of interstate arbitration under Act of 1949, P. L. 1726, §13, 72 PS §2490.13.

Whether an expense is properly one of administration rather than one chargeable to the distributee of income producing property will be a question to be determined under the facts of the specific situation involved.

SECTION 612. *Bequest to Fiduciary or Attorney in Lieu of Fees.*—A transfer to an executor, trustee or attorney in lieu of compensation for services shall be deductible to the extent it does not exceed reasonable compensation for such services to be performed.

COMMENT. This is in conformity with existing law: Act of 1919, P. L. 521, §41. The excess of the transfer over reasonable compensation remains taxable.

SECTION 613. *Family Exemption.*—The family exemption shall be deductible.

COMMENT. This is in conformity with existing case law: *Hildebrand's Est.*, 262 Pa. 112. Although construed as a transfer neither by will nor by the intestate law, the family exemption is here treated as a deduction in accordance with existing practice; thus property retained or claimed for the exemption is not excluded from the listing of decedent's taxable property.

SECTION 614. *Funeral and Burial Expenses.*—Reasonable and customary funeral expenses, including cost of a family burial lot or other resting place, shall be deductible.

COMMENT. This is in conformity with existing law: Act of 1923, P. L. 244, as amended: *Mellor's Est.*, 286 Pa. 149; *Robbins Est.*, 9 Erie 251.

Examples of reasonable and customary funeral expenses include, but are not limited to, opening of grave, services of undertaker, embalming and transportation, casket, clothes, flowers, traveling expenses and fee of clergyman, rental of church or house for burial ceremonies and household expenses, food and refreshments during the funeral period.

SECTION 615. *Tombstones and Gravemarkers.*—Reasonable and customary expenses for the purchase and erection of monuments or gravestones, grave and lot markers on decedent's burial lot or final resting place shall be deductible.

COMMENT. This is suggested by Act of 1923, P. L. 244 as amended, and apparently changes existing law in so far as these expenses are deductible only when incurred in respect to the lot in which decedent is buried; existing law apparently requires only that the lot be a "family burial lot": cf. *Hetrick Est.*, 78 D. & C. 52.

SECTION 616. *Burial Trusts or Contracts.*—Bequests or devises in trust, or funds placed in trust after decedent's death, or funds paid under a contract after decedent's death, in reasonable amounts, to the extent that such funds or the income therefrom are to be applied to the care and preservation of the family burial lot or other final resting place in which the decedent is buried or the remains of the decedent repose, and the structures thereon, shall be deductible.

COMMENT. This is suggested by Act of 1923, P. L. 1078, §1. The deduction is allowed "to the extent the income" is perpetually applied to care of the burial place, whereas existing law recognized, as deductible, bequests "the entire interest or income from which" was to be so applied. Thus the Act recognizes the deduction although some of the income is devoted to another purpose: cf. *Ashbridge's Est.*, 59 Montg. 66 with *Lefevre's Est.*, 9 D. & C. 654.

This section recognizes explicitly that funds placed in a burial trust after the decedent's death, which have been considered under existing case law as a deductible funeral expense (*Dever Est.*, 83 D. & C. 469, 3 Fiduc. Rep. 314), are here expressly made deductible regardless of the source of the funds in the same manner as if the decedent himself had so bequeathed them. It also recognizes that the form of the burial agreement may be contractual rather than the creation of a trust.

This section, like Section 615, requires that the decedent be buried in the resting place as to which the expense is incurred. It changes the rule of *Hetrick Est.*, 78 D. & C. 52.

SECTION 617. *Bequests for Religious Services.*—Bequests in reasonable amounts for the performance or celebration of religious rites, rituals, services or ceremonies in consequence of the death of the decedent shall be deductible.

COMMENT. This changes existing law, under which such bequests were not deductible: *Nead's Est.*, 55 Pa. Super. 573; *Duffy Est.*, 2 D. & C. 2d 250, 5 Fiduc. Rep. 77.

Although analogous to a charitable bequest, as well as a funeral expense, the bequest is made a deduction rather than an exempt transfer. This avoids problems such as those which arise when the bequest is made to an individual clergyman who has not taken a vow of poverty.

GENERAL COMMENT. The language of Sections 614-617 has been broadened beyond that of existing law, which speaks of "burial lots," in order to make it clear that costs of cremation, preservation of ashes, etc., are deductible. Thus, the term "resting place" has been employed to reach this result, which conforms to existing practice.

C. Taxes

SECTION 621. *State and Foreign Death Taxes.*—Death taxes, disregarding interest and penalties, paid to other states and territories of the United States, and to taxing jurisdictions outside the United States and its territories, on assets the transfer of which is subject to tax under this Act, if such taxes are required to be paid to bring the assets into Pennsylvania, or to transfer them to the new owner, shall be deductible.

COMMENT. Allowance of such death taxes as a deduction conforms with existing law: *Frick v. Pa.*, 268 U.S. 473. Security transfer taxes (*Otto's and Van Beil's Estates*, 257 Pa. 155) are deductible under Section 602 as expenses of administration.

SECTION 622. *Federal Estate Tax.*—Federal estate tax, disregarding interest and penalties, paid on the estate of a decedent, and for which a transferee (the transfer to whom is subject to tax under this Act), is liable, shall be deductible.

COMMENT. This changes existing law: Act of 1919, P. L. 521, §2, as amended; *Kirkpatrick's Est.*, 275 Pa. 271; *Est. of Elliott*, 113 Pa. Super. 350.

This section will apply both to resident and nonresident decedents. Only the tax which reduces the amount of a transferee's gift, whether because of decedent's direction, the Estate Tax Apportionment Act of 1951, Apportionment Acts in other jurisdictions, or 1954 I.R.C. §§2206 and 2207, is made deductible, and no deduction is allowed for Federal estate tax attributable to assets the transfer of which is not subject to inheritance tax.

SECTION 623. *Other Taxes.*—Taxes imposed against the decedent or against any property constituting a part of decedent's gross taxable estate, and which are owing prior to decedent's death shall be deductible. However, taxes for which decedent is not personally liable shall not be deductible in an amount exceeding the value of the property against which such taxes are liened.

COMMENT. This is in conformity with existing law: *Austin's Est.*, 52 D. & C. 681 (real estate tax); *Payne's Est.*, 48 D. & C. 578 (income tax).

D. Liabilities—Deductible

SECTION 631. *Liabilities of the Decedent; In General.*—All liabilities of the decedent shall be deductible, subject to the limitations hereinafter set forth.

COMMENT. This section is subject to the general rule stated in the second sentence of Section 601. It is suggested by Act of 1919, P. L. 521, §2.

SECTION 632. *Debts Based upon Contract or Agreement; In General.*—Except as otherwise provided in Sections 638 and 639, deductions hereinafter set forth for indebtedness of the decedent, when founded upon a promise or agreement, shall be limited to the extent that it was contracted bona fide and for an adequate and full consideration in money or money's worth.

COMMENT. This is suggested by Act of 1939, P. L. 721, §1, and is in conformity with existing law. Neither a seal nor a statement that the parties intend to be legally bound supply the "adequate and full consideration in money or money's worth" which is required by this Act.

SECTION 633. *Secured Loan.*—Except as provided by Section 654, indebtedness owing by the decedent upon a secured loan shall be deductible whether or not the security is a part of the gross taxable estate. For the purpose of this section, a policy loan or a fund advanced on an insurance contract by the insurer shall be construed as a secured loan.

COMMENT. This is in conformity with existing law (*Wilson Est.*, 363 Pa. 546; *Yoskin Est.*, 71 Montg. 259, 5 Fiduc. Rep. 120; Cf. *Goldstein Est.*, 384 Pa. 1, and *Biron Est.*, 4 D. & C. 2d 729, 6 Fiduc. Rep. 46) except in so far as it changes the holding in *Schwartz Est.*, 369 Pa. 574, regarding policy loans from an insurance company. As with all the deductions arising from decedent's indebtedness, the general provision of Section 632 is applicable.

SECTION 634. *Joint Obligation.*—Except as provided by Section 654, the decedent's liability (net of all rights of contribution) on a joint obligation shall be deductible whether

or not payment thereof is secured by entireties property or property which passes to another under rights of survivorship.

COMMENT. As with all the deductions arising from decedent's indebtedness, the general provision of Section 632 is applicable. Application of this section is also limited by the general provisions of Section 601. See *Kershaw Est.*, 352 Pa. 205.

SECTION 635. *Support Contract.*—Indebtedness arising from a contract for the support of decedent shall be deductible.

COMMENT. This is in conformity with existing law: *Armstrong Est.*, 3 D. & C. 2d 285, 5 Fiduc. Rep. 406; *Stone Est.*, 81 D. & C. 60.

As with all the deductions arising from decedent's indebtedness, the general provision of Section 632 is applicable.

SECTION 636. *Legacy in Discharge of Decedent's Obligation.*—Decedent's obligation shall be deductible even though discharged by testamentary gift.

COMMENT. This is in conformity with existing law: *Klein's Est.*, 28 D. & C. 449; *Quinn's Est.*, 8 W.N.C. 312; cf. *Miller's Est.*, 9 D. & C. 804; *Walter's Est.*, 3 C.C. 447. See *Hitchcock Est.*, 385 Pa. 569.

As with all the deductions arising from decedent's indebtedness, the general provision of Section 632 is applicable.

SECTION 637. *Outlawed Debt.*—Decedent's debt which is unenforceable because of the operation of the statute of limitations shall be deductible if paid.

COMMENT. This is in conformity with existing law: *Drehmann Est.*, 66 Montg. 240; *Lykens' Est.*, 53 D. & C. 66; *McKee's Est.*, 10 Dist. 538.

As with all deductions arising from decedent's indebtedness, the general provision of Section 632 is applicable.

SECTION 638. *Pledge to Exempt Transferee.*—A pledge to a transferee exempt under the provisions of Section 302 of this Act shall be deductible if paid by the estate, whether or not it is legally enforceable.

COMMENT. Although transfers to charities are exempt transfers, rather than deductible gifts, this section is necessary to provide a deduction when the transfer to charity is effectuated by reason of decedent's debt.

SECTION 639. *Liability as Accommodation Party or for Tort.*—Liabilities arising from the decedent's tort or from decedent's status as an accommodation endorser, guarantor or surety shall be deductible except to the extent that it can be reasonably anticipated that decedent's estate will be exonerated or reimbursed by others primarily liable or subject to contribution.

COMMENT. There is no statutory precedent for this section. It is required in so far as obligations arising under contract are concerned because of the general provisions of Section 632. In so far as tort liability is concerned, it is covered by the general provisions of Section 631, but is included here in an abundance of caution.

SECTION 640. *Married Women's Obligations.*—The fact that a wife is survived by a husband legally liable, and financially able, to pay any item which, if she were unmarried, would qualify as a deduction under this Article, shall not result in the disallowance of such item as a deduction.

COMMENT. This conforms with the policy of conferring upon the married woman a status equivalent to that of an unmarried woman in many respects. Existing law in some respects is contrary to this section: *Dunkle's Est.*, 16 D. & C. 45 (necessaries); *Ford's Est.*, 5 D. & C. 523 (medical expenses). For the rule in certain situations when the husband pays the expenses, see Section 601.

E. Not Deductible

SECTION 651. *Spouse's Allowance.*—The value of assets claimed for the spouse's allowance shall not be deductible.

COMMENT. This is in conformity with existing law: *Mitchell's Est.*, 2 D. & C. 509.

SECTION 652. *Claims Under Marital or Support Agreement with Former or Surviving Spouse.*—Claims of a former or surviving spouse, or others, under an agreement between the former or surviving spouse and the decedent, insofar as they arise in consideration of a relinquishment or promised relinquishment of marital or support rights, shall not be deductible.

COMMENT. This clarifies the existing law regarding claims of children (cf. *Geary Est.*, 2 D. & C. 2d 453, 5 Fiduc. Rep. 254; cf. *Shore Est.* (No. 1), 81 D. & C. 119, 1 Fiduc. Rep. 95) and spouse's designees: *Hitchcock Est.*, 385 Pa. 569; *McEwen Est.*, 348 Pa. 23. See also *Hadesty Est.*, 44 Schuyl. 96. In other respects it changes existing law: *Mills Est.*, 367 Pa. 504; *Genthner Est.*, 8 Fiduc. Rep. 503; *Thomas' Est.*, 30 D. & C. 53; *Fridenberg's Est.*, 8 D. & C. 705; cf. *Hitchcock Est.*, 385 Pa. 569; *Dear's Est.*, 22 D. & C. 639; *Cherry's Est.*, 29 D. & C. 378.

SECTION 653. *Litigation Expenses.*—Litigation expenses of beneficiaries shall not be deductible.

COMMENT. This is in conformity with existing law: *Lines's Est.*, 155 Pa. 378; cf. *Taber's Est.*, 257 Pa. 81; *Burkhart's Est.*, 25 Pa. Super. 514.

SECTION 654. *Foreign Obligations.*—Obligations secured by foreign real estate or tangible personal property having its situs outside of Pennsylvania and for which allowance is given in determining a death tax assessed in such foreign jurisdiction shall not be deductible except to the extent such indebtedness exceeds the value of such property as determined by the taxing authorities of such foreign jurisdiction.

COMMENT. This is in conformity with existing law: *Lowry's Est.*, 33 D. & C. 591; *Patterson's Est.*, 17 D. & C. 299.

F. Deductible—Future Interests—Costs

SECTION 661. *Costs.*—All reasonable expenses of administration, incurred after assessment of the inheritance tax on prior interests (including any death taxes paid out of property supporting such prior interests) shall be deductible in determining the value of a future interest on the valuation date. This section shall not apply when the tax is paid under the provision of Section 713.

COMMENT. For reasonable administration expenses see Section 611 and comment thereto. For deductibility of Federal estate tax in general, see Section 622.

ARTICLE VII

RETURNS—DETERMINATION OF TAX—PAYMENT
OF TAX

NOTE: Section 21 of the Act of 1919, P. L. 521, as amended, which provides for commissions to the registers, will be saved from repeal.

A. Inheritance Tax

SECTION 701. *Persons Liable for Return.*—The following persons shall make a return:

- (1) The personal representative of the estate of the decedent as to property of the decedent administered by him. In such return the personal representative shall also make return of such additional property which is or may be subject to inheritance tax of which he shall have or acquire knowledge;
- (2) The transferee of property upon the transfer of which inheritance tax is or may be imposed by this Act, including a trustee of property transferred in trust; provided that no separate return need be made by the transferee of property included in the return of a personal representative.

The inclusion of property in the return shall not constitute an admission that its transfer is taxable.

COMMENT. This section is suggested by Act of 1919, P. L. 521, §§3, 17, as amended, and Act of 1923, P. L. 1078, §3.

SECTION 702. *Supplemental Returns.*—The persons required to file a return under Section 701 of this Act shall promptly file a supplemental return with respect to such additional assets and transfers as thereafter come to their knowledge.

COMMENT. This is suggested by Act of 1939, P. L. 721, §2.

SECTION 703. *Time for Filing Return.*—The returns required by Section 701 shall be filed within one year after the death of the decedent. At any time within such year, the Secretary of Revenue, in his discretion, may grant an exten-

sion of the time for filing of the returns for an additional period of six (6) months.

COMMENT. This changes existing law: Act of 1919, P. L. 521, §15, as amended by Act of 1923, P. L. 1078, §3.

SECTION 704. *Form of Returns.*—The returns required by Sections 701 and 702 shall be made in the form prescribed by the Secretary of Revenue.

COMMENT. This section gives the Secretary authority to utilize a combined form of return, which may include names of beneficiaries or heirs, a statement of deductions, and other relevant schedules, in addition to a listing of decedent's assets and transfers.

SECTION 705. *Place for Filing Returns.*—When the decedent was a resident, the returns shall be filed with the register. When the decedent was a nonresident, the returns shall be filed with the register who issued letters, if any, in the Commonwealth, otherwise with the Department of Revenue.

COMMENT. This changes existing practice, insofar as nonresident returns are to be filed in Harrisburg only if no letters have been granted in Pennsylvania.

SECTION 706. *Appraisalment.*—The Secretary of Revenue shall have supervision over, and make or cause to be made, fair and conscionable appraisements of property the transfer of which is subject to tax under this Act. The appraisalment, unless suspended until audit, shall be made within three (3) months after the return has been filed, and if not so made, shall be made within such further period as the court upon application of any party in interest, including the personal representative, shall fix.

COMMENT. The first sentence is in conformity with existing law: Act of 1927, P. L. 727, §1, as amended. The second sentence is suggested by Act of 1919, P. L. 521, §10, which provision contains no time limitation.

SECTION 707. *Deductions.*—The official with whom the return is required to be filed under Section 705 shall determine the allowance or disallowance of all deductions claimed, provided that no deductions shall be allowed when claimed

in a return filed less than one month before audit of the account of the personal representative. The determination, unless suspended until audit, shall be made within three (3) months after the claim for allowance has been filed, and if not so made, shall be made within such further period as the court upon application by any party in interest, including the personal representative, shall fix.

COMMENT. This is suggested by Act of 1919, P. L. 521, §2, as amended. The proviso in the first sentence is suggested by Act of 1939, P. L. 721, §1, which was repealed by Act of 1943, P. L. 757, §2. The time limit here set forth is an addition to existing law.

SECTION 708. *Assessment of Tax.*—After the appraisal has been made, and the allowance or disallowance of deductions determined, the inheritance tax shall be assessed by the official with whom the return is required to be filed under Section 705. The assessment, unless suspended until audit, shall be made within one month after the filing of the appraisal or determination of deductions, whichever occurs later, and if not so made, shall be made within such further period as the court upon application by any party in interest, including the personal representative, shall fix.

COMMENT. There is no counterpart of this section in the Act of 1919, P. L. 521, as amended. Cf. Act of 1919, P. L. 521, §13.

SECTION 709. *Notice.*—The Secretary of Revenue shall give or cause to be given notice of the filing of the appraisal, the determination of the allowance or disallowance of deductions, and the amount of tax assessed, or any supplements thereto, to the personal representative and to any transferee who filed a tax return, or to their respective attorneys.

COMMENT. This is in conformity with existing law: *Belcher's Est.*, 211 Pa. 615.

SECTION 710. *Failure to File Returns Not a Bar to Assessment of Tax.*—Failure to file a return of a taxable transfer shall not bar the making of an appraisal or supplemental appraisal, or assessment of tax or supplemental assessment of tax based upon taxable transfers not returned under the provisions of this Act.

COMMENT. This is suggested by Act of 1919, P. L. 521, §15, as amended, under which the register could compel the filing of an inventory. See Section 823(1) of this Act.

SECTION 711. *Payment Date.*—Inheritance tax is due at the date of decedent's death and (except as provided in Section 712) shall become delinquent at the expiration of one year after decedent's death.

COMMENT. This is in conformity with existing law, and is suggested by Act of 1919, P. L. 521, §15, as amended by Act of 1923, P. L. 1078, §3, and Act of 1919, P. L. 521, §38, as amended.

SECTION 712. *Payment Date; Future Interest.*—In the case of a transfer of any estate, income, or interest to take effect in possession and enjoyment after the expiration of any one or more interests for a term of years, for life, or for other limited period, the tax on such future interest shall be payable within three (3) months after the transfer takes effect in possession and enjoyment, and shall be delinquent thereafter.

COMMENT. This is in conformity with existing law except for the three month grace period granted herein: Act of 1919, P. L. 521, §3, as amended. See *Darsie Est.*, 354 Pa. 540, 542, for a statement of the proper practice to be followed in appraising present and future interests. The words "take effect in possession and enjoyment" in the case of an interest which matures at the death of a life beneficiary, mean the date of such death. The three-month grace period is intended to take the place of the prior uncertain rule: cf. *Morgan's Est.* (No. 1), 41 D. & C. 360.

SECTION 713. *Payment date; Future Interest; Year of decedent's Death; Contingencies.*

(a) *Payment Within Year of Decedent's Death.*—At any time within one year after the decedent's death, the personal representative may elect by a writing filed with the register to have the value of a future interest determined as of the date of decedent's death and to pay the tax assessed thereon, provided that no tax on the future interest shall be paid at a rate higher than the tax on any prior interests without the consent of the owner of the prior interest. Such tax shall become delinquent at the expiration of one year from decedent's death. If the future interest is accelerated within the

year of decedent's death, because of the occurrence of an event described in Section 505, the value of the future interest shall be determined by making adjustment for the value of any prior interest causing such acceleration, computed as provided in Section 505.

COMMENT. This subsection, in conjunction with Section 506, makes it clear that valuation of a future interest during the year of administration is as of the decedent's death. Under existing law, it would appear that future interests must be valued as of the date of election to prepay the tax, even though such election is made shortly after death: Act of 1919, P. L. 521, §3, as amended.

The last sentence will result in the valuation of a future interest, which has been accelerated during the year following the decedent's death, as follows: value of the property supporting the future interest, minus the value at decedent's death of the income actually paid to the prior life tenant (i.e. the "value" of the life interest under Section 505). The term "accelerated" is used so that a future interest following two life estates, only one of which is terminated within a year of decedent's death, can also be valued under this section, i.e. value of the property supporting the future interest, minus the value at decedent's death of the income actually paid to the deceased life tenant, and minus the actuarial value of the second and still existing life tenancy.

(b) *Future Interest Subject to Contingencies.*—When the rate of tax on the transfer of a future interest is dependent upon a contingency, and the election permitted by subsection (a) is made, it shall specify whether tax is to be assessed at the lowest rate possible in the specific contingencies involved or at a higher rate. If the tax rate applicable to the person to whom the property actually passes when such future interest takes effect in possession and enjoyment shall be higher than the rate theretofore paid under the election, the tax on the future interest shall then be reassessed based upon the rate actually applicable, the valuation date to be the date such interest takes effect in possession and enjoyment as provided in Section 506 and the delinquent date to be as provided in Section 712, credit being given, however, for any tax on such future interest theretofore paid pursuant to the election but without interest being allowed thereon. If the tax rate applicable to the person to whom the property actually passes

when such future interest takes effect in possession and enjoyment is lower than the rate theretofore paid under the election, the tax on the future interest shall then be reassessed based upon the rate actually applicable, the valuation date to be the date such interest takes effect in possession and enjoyment as provided in Section 506 and the delinquent date to be as provided in Section 712, and a refund of any excess shall be made without interest.

COMMENT. This subsection is substantially in accord with the existing practice which has worked well. Payment in advance avoids the necessity of making periodic reports when principal funds are distributed to an income beneficiary.

SECTION 714. *Payment Date; Future Interest; Payment After Year from Decedent's Death; Contingencies.*

(a) *Payment After Year from Decedent's Death.*—At any time, after one year from the decedent's death, and prior to the vesting of a future interest in possession and enjoyment, a fiduciary or any party in interest may elect by a writing filed with the register to have the value of a future interest determined as of the date of the filing of such election and to pay the tax assessed thereon, provided that no tax on the future interest shall be paid at a rate higher than the tax on any prior interests without the consent of the owner of the prior interest. Such tax shall become delinquent at the expiration of three months from the filing of the election.

COMMENT. This subsection, in conjunction with Section 506, is in conformity with existing law in so far as it permits prepayment of tax on future interest, at the value of such interest determined as of the date election is made to prepay the tax: Act of 1919, P. L. 521, §3, as amended. It should be noted that the election to value the future interest for prepayment is effective only when the person electing pays the tax.

For definition of fiduciary, see Section 102(9).

(b) *Future Interests Subject to Contingencies.*—When the rate of tax on the transfer of a future interest is dependent upon a contingency, and the election permitted by subsection (a) is made, it shall specify whether tax is to be assessed at the lowest rate possible in the specific contingencies

involved or at a higher rate. If the tax rate applicable to the person to whom the property actually passes when such future interest takes effect in possession and enjoyment shall be higher than the rate theretofore paid under the election, the tax on the future interest shall then be reassessed based upon the rate actually applicable, the valuation date to be the date such interest takes effect in possession and enjoyment as provided in Section 506 and the delinquent date to be as provided in Section 712, credit being given, however, for any tax on such future interest theretofore paid pursuant to the election but without interest being allowed thereon. If the tax rate applicable to the person to whom the property actually passes when such future interest takes effect in possession and enjoyment is lower than the rate theretofore paid under the election, the tax on the future interest shall then be reassessed based upon the rate actually applicable, the valuation date to be the date such interest takes effect in possession and enjoyment as provided in Section 506 and the delinquent date to be as provided in Section 712, and a refund of any excess shall be made without interest.

COMMENT. See comment to Section 713(b).

SECTION 715. *Effect of Election by Fiduciary.*—When the fiduciary makes an election permitted by Sections 713 or 714, such election shall be binding upon all parties in interest. When the personal representative has made such election prior to the transfer of property administered by him, such election shall be binding, but his failure so to elect shall not limit the discretion given in Sections 713 or 714 to others to prepay the tax.

COMMENT. The first sentence changes existing law: cf. *Crane's Est.*, 314 Pa. 193. It is intended to foreclose actions for contribution when the prepayment proves to have increased the tax on the future interest.

SECTION 716. *Discount.*—To the extent that the inheritance tax is paid within three (3) months after the death of the decedent, a discount of five percent shall be allowed.

COMMENT. This is in conformity with existing law: Act of 1919, P. L. 521, §38. The discount is secured only by payment within

three months of the death of the decedent-transferor: *Caldwell Est.*, 76 D. & C. 93, 1 Fiduc. Rep. 184.

“Within three (3) months” means within three calendar months: Statutory Construction Act, 46 PS §601(67); *Black's Est.*, 46 C.C. 487.

SECTION 717. *Interest.*—If the inheritance tax is not paid by the date it becomes delinquent, thereafter interest on the unpaid tax shall be charged thereon at the rate of six (6) percent per year. When payment of inheritance tax is not made because of litigation or other unavoidable cause of delay and the property on which the tax has been calculated has remained in the hands of a fiduciary and has not produced a net income of six (6) percent per year, interest for such period shall be calculated at the rate of the net income produced by such property. When the decedent owned a future interest and the tax thereon has not been paid prior to the time the decedent's estate is entitled to possession and enjoyment thereof, interest on such tax shall not begin to run until three (3) months after the decedent's estate becomes entitled to possession and enjoyment thereof. Any payment on delinquent inheritance tax shall be applied, first, to any interest due on the tax at the date of payment, and then, if there is any balance, to the tax itself.

COMMENT. This is suggested by Act of 1919, P. L. 521, §38, as amended. It will now be clear that interest is to be charged at the rate earned by the property upon which the tax is delinquent, in the situation described, rather than to the extent income is earned thereon: See *Rice's Est.*, 56 Pa. Super. 270; *Nes' Est.*, 58 York 53; *Harlackers' Est.*, 54 York 74; *McCrorry Est.*, 5 D. & C. 2d 701, 6 Fiduc. Rep. 90; *Lafferty's Est.*, 24 Dist. 28.

The term “litigation or other unavoidable cause of delay” is found in existing law, and is interpreted to require good faith litigation arising from an honest disagreement: *Husbands Est.*, 316 Pa. 361.

The special rule for future interests owned by the decedent is considered necessary to avoid interest from three months after the date of the original decedent's death when the future interest remains undiscovered until it comes into possession and enjoyment upon the death of the life beneficiary or other occasion for termination of the prior interest; for simplicity, interest does not begin until possession and enjoyment begins, regardless of knowledge of the existence of the future interest prior to that time.

SECTION 718. *Source of Payment.*

(a) *Outright Devises and Bequests.*—The inheritance tax imposed by this Act, on the transfer of property passing by will absolutely and in fee, except as the decedent shall direct otherwise in his will, shall be paid out of property forming a part of the residuary estate. Such payment shall be made by the personal representative, and if not so paid, shall be made by the transferee of the residuary estate.

COMMENT. This subsection changes existing law, under which the tax is payable by the legatee or out of property passing to him unless the will clearly indicates otherwise: *Brown's Est.*, 208 Pa. 161; *Penn-Gaskell's Est.*, 208 Pa. 342; *Rettew's Est.*, 142 Pa. Super. 335.

(b) *Transfer for Limited Period.*—The inheritance tax imposed by this Act, in the case of a transfer of any estate, income or interest for a term of years, for life, or for other limited period, except as the decedent shall direct otherwise in his will or in the instrument of transfer, shall be paid out of the principal of the property by which the estate, income or interest is supported. Such payment shall be made by the personal representative, and if not so paid, shall be made by the trustee, if any, and if not so paid, shall be made by the transferee of such principal.

COMMENT. This subsection, like subsection (a), changes existing law. However, it is consistent with Section 3(b) of the Estate Tax Apportionment Act of 1951. This subsection will apply to the tax on limited estates whether created by will or by inter vivos conveyance.

(c) *Other Transfers.*—Except as provided in subsections (a) and (b) of this section, the ultimate liability for inheritance tax imposed by this Act shall be upon each transferee.

COMMENT. The term "shall be paid . . . out of" in subsections (a) and (b) is intended to have the same meaning as "ultimate liability" in this subsection—i.e. the source designated in all the subsections of this section is the ultimate source of funds to pay the tax.

GENERAL COMMENT. It is intended that the statutory "tax clause" here set forth shall not be construed as an additional transfer to the transferee who receives his share free of tax. The rule promulgated by the Department of Revenue, effective September 15, 1958 (8 Fiduc. Rep. 606), is repudiated.

SECTION 719. *Place of Payment.*—When the decedent was a resident, the inheritance tax shall be paid to the register. When the decedent was a nonresident, the inheritance tax shall be paid to the register who issued letters, if any, in the Commonwealth, otherwise to the Department of Revenue.

COMMENT. This changes existing practice insofar as nonresident taxes are paid directly to the Department of Revenue only if no letters have been granted in Pennsylvania. See Section 705.

SECTION 720. *General Powers of Secretary of Revenue.*—In the event that the register fails to take the necessary proceedings in connection with the appraisement, allowance of deductions, assessment of tax, or the collection of tax, the Secretary of Revenue shall have all the powers herein vested in the register and, at his option, may take such action and shall charge to the register and deduct from any commissions or fees otherwise due him all costs and expenses incurred by the Secretary of Revenue in connection with such proceedings.

COMMENT. See Act of 1919, P. L. 521, §15.

B. Estate Tax

SECTION 731. *Persons Liable.*—The person or persons required by Section 701 to make the inheritance tax return, are initially liable for payment of the estate tax imposed under Sections 421 and 431.

COMMENT. This is in conformity with existing law, under which the Pennsylvania estate tax is collected in accordance with the provisions of the inheritance tax statute (Act of 1927, P. L. 859, §1, as amended). The ultimate liability is in accordance with the provisions of the Estate Tax Apportionment Act of 1951: See Section 1(2) thereof. See also Section 736 of this Act.

SECTION 732. *Filing of Return; Time; Place; Assessment of Tax.*—The personal representative of every decedent, or if there is no personal representative, any other fiduciary charged by law with the duty of filing a Federal estate tax return within thirty days of the filing or receipt thereof, shall file with the register or, if the decedent was a nonresident, with the register who issued letters, if any, in the Commonwealth, otherwise with the Department of Revenue, a copy

of his Federal estate tax return and of any communication from the Federal Government making any final change in the return or of the tax due thereon. The assessment of estate tax shall be made by such official within one month after the filing of the documents here required to be filed, and if not so made, shall be made within such further period as the court, upon application of any party in interest, including the personal representative, shall fix.

COMMENT. This changes existing law insofar as nonresident returns are filed with the Department of Revenue only if no letters were granted in Pennsylvania: Act of 1931, P. L. 114, §1, as amended.

SECTION 733. *Payment Date.*—The estate tax imposed by Sections 421 and 431 is due at the date of decedent's death but shall not become delinquent until the expiration of eighteen (18) months after decedent's death; provided that any estate tax imposed by Sections 421 and 431 of this Act occasioned by a final change in the return or of the tax due thereon shall not become delinquent until the expiration of one month after the person or persons liable to pay the tax have received final notice of the increase in the Federal estate tax.

COMMENT. This is suggested by Act of 1927, P. L. 859, §1, and Act of 1939, P. L. 725, §1, as amended.

SECTION 734. *Discount.*—No discount shall be allowed in paying the estate tax imposed by Sections 421 and 431.

COMMENT. This is in conformity with existing law.

SECTION 735. *Interest.*—If the estate tax imposed by Sections 421 and 431 is not paid on or before the delinquent date fixed by Section 733, interest on the unpaid tax shall be charged thereafter at the rate of six (6) percent per year.

COMMENT. This is suggested by Act of 1939, P. L. 725, §1, as amended. It is not considered feasible to make provision for a lesser rate, as does existing law. The situations in which a lesser rate would be justified seem too remote to warrant the complications necessarily involved, particularly with respect to tax occasioned by increases over the original return, which is not delinquent until 30 days after final notice of the increase in the Federal estate tax.

SECTION 736. *Source of Payment.*—The estate tax imposed by Sections 421 and 431 shall be apportioned and ultimately paid in accordance with the provisions of the Estate Tax Apportionment Act of 1951.

COMMENT. This is in conformity with existing law.

SECTION 737. *Place of Payment.*—When the decedent was a resident, the estate tax shall be paid to the register. When the decedent was a nonresident, the estate tax shall be paid to the register who issued letters, if any, in the Commonwealth, otherwise to the Department of Revenue.

COMMENT. This changes existing practice insofar as the tax is paid directly to the Department of Revenue only if no letters have been granted in Pennsylvania. See Sections 705 and 719.

C. Duties of Personal Representatives, Transferees, and Depositories

SECTION 741. *Deduction and Collection of Tax.*—Subject to the provisions of Section 718, every personal representative, or other fiduciary in charge of or in possession of any property, or instruments evidencing ownership thereof, the transfer of which is subject to a tax imposed by this Act, other than tax on a future interest not yet delinquent, shall deduct the tax from the property, if money, or shall collect the tax from the transferee. Any delivery of property or instruments by such fiduciary to a transferee, except in accordance with a decree of distribution of the court, shall not relieve him of personal liability for a tax imposed by this Act. No personal representative or other fiduciary in charge of or in possession of any property subject to this Act shall be compelled to pay or deliver it to the transferee except upon payment to him of the tax due thereon other than tax on a future interest not yet delinquent. If such transferee neglects or refuses to pay the tax, the personal representative or other fiduciary may sell the property subject to the tax, or so much thereof as is necessary, under direction of the court. Every sum of money retained by the personal representative or other fiduciary, or paid to him on account of the taxes imposed by this Act, shall be paid by him before the tax becomes delin-

quent, or if received thereafter, shall be paid by him promptly upon its receipt.

COMMENT. This is suggested by Act of 1919, P. L. 521, §16, as amended; *Campion's Est.*, 80 D. & C. 499, 2 Fiduc. Rep. 54. This section will be applicable to property in the possession of the personal representative: see Section 701 and comment thereto. Thus, this section changes the ruling in *Dowd v. Lynch*, 81 D. & C. 413, 2 Fiduc. Rep. 242; 5 Fiduc. Rep. 11, regarding U. S. Savings bonds.

SECTION 742. *Duties of Depositories.*—When money is deposited in a bank or other financial institution in the names of two or more persons, other than husband and wife, or in the name of a person or persons in trust for another or others, and one of the parties to the deposit shall die, it shall be the duty of the bank or other financial institution, within ten (10) days after knowledge of the death, to notify the Department of Revenue thereof, giving the name of the deceased person, the date of the creation of the joint or trust deposit, the amount on deposit at the date of death with the bank or other financial institution, and the name and address of the survivor or survivors to the account. No notification shall be required in regard to such accounts when the deposit at the time of death does not exceed three hundred (\$300) dollars.

COMMENT. This is suggested by Act of 1931, P. L. 690, §2, as amended. See Section 792 for penalty for failure to give the notice herein required.

D. Tax Compromise—Arbitration—Alleged Nonresident

SECTION 751. *Compromise by Attorney General.*—The Attorney General may compromise in writing, with the person liable, the tax, including interest thereon, payable on any transfer of property included in the estate of any decedent who it is claimed was a nonresident at the time of his death. A copy of the compromise agreement shall be filed with the register who issued letters if any, in the Commonwealth, otherwise with the Department of Revenue. The compromise agreement shall constitute a final determination of the matters covered by it, and the payment of the tax as fixed by the agree-

ment shall discharge all persons and property from liability with respect to the tax.

COMMENT. This supplants the Act of 1945, P. L. 546, and is not intended to limit the common law rights of the Attorney General.

SECTION 752. *Uniform Act on Interstate Compromise and Arbitration of Inheritance Taxes.*—When the register or the Secretary of Revenue claims that a decedent was a resident of the Commonwealth of Pennsylvania at the time of his death and the taxing authorities of another state or territory make a like claim on behalf of their state or territory, a written agreement of compromise or a written agreement to submit the controversy to a board of Arbitrators may be made under the provisions of the Uniform Act on Interstate Compromise and Arbitration of Inheritance Taxes.

COMMENT. This section is included here for completeness and to avoid any suggestion of partial repeal of the Uniform Act on Interstate Compromises and Arbitration of Inheritance Taxes.

E. Bond—Future Interests

SECTION 761. *When Required.*—When the tax on a transfer of a future interest other than a future interest in real property has not been paid after such tax has become due, the Secretary of Revenue, if he deems it necessary for the protection of the interest of the Commonwealth, may require the transferee in present possession, or if a trust is involved, the trustee, to file a bond in the name of the Commonwealth with sufficient surety, in an amount not exceeding twice the tax computed when the bond is given at the highest rate possible in the specific contingencies involved, conditioned for the payment of the tax when it becomes delinquent. If the transferee in present possession or the trustee fails to enter satisfactory security within sixty (60) days from the notice by the Secretary of Revenue of the need for security, the tax shall thereupon become delinquent. No bond shall be required under the provisions of this section if the trustee or one of the trustees is a bank and trust company or a trust company incorporated in the Commonwealth, or

a national banking association having its principal office in the Commonwealth.

SECTION 762. *Filing.*—The bond required by Section 761 shall be filed in the office of the register.

COMMENT. Sections 761 and 762 are suggested by Act of 1919, P. L. 521, §3, as amended. It is not necessary to include future interests in real property in Section 761 because the Commonwealth is adequately secured by its lien thereon (Sections 801 and 802).

F. Bond—Delinquent Tax

SECTION 771. *When Required.*—The court, in its discretion, at any time after a tax imposed by this Act shall become delinquent, upon application of the Secretary of Revenue, may require any person liable for a tax imposed by this Act to give a bond for its payment. The bond shall be in the name of the Commonwealth, in such amount and with such surety as the court shall approve, and conditioned for the payment of the tax, plus interest thereon at the rate of six (6) percent per year commencing on the date the tax became delinquent, within a time certain to be fixed by the court and specified in the bond.

SECTION 772. *Filing.*—The bond required by Section 771 shall be filed in the office of the register.

COMMENT. The Act of 1919, P. L. 521, contains no counterpart of these sections. They are suggested by Sections 761 and 762 of this Act, and by Act of 1919, P. L. 521, §15, as amended.

G. Evidence of Payment of Tax

SECTION 781. *Real Estate in Another County.*—When any tax is imposed and paid under this Act on real estate located in a county other than that of the register who received payment, such register shall immediately forward to the register of the county where the real estate is located a certificate of the payment of the tax on such real estate, which shall be entered of record in his office. The register of the county where the real estate is located shall be entitled to a fee of two (\$2) dollars for entering the record of pay-

ment, to be paid as a part of the administration expenses of the decedent's estate.

COMMENT. This is suggested by Act of 1923, P. L. 1034, §1.

H. Failure to File Returns—False Returns

SECTION 791. *Failure to File Tax Returns.*—Any person who wilfully fails to file the returns or other reports required of him under the provisions of Sections 701, 702 and 732, shall be personally liable, in addition to any liability imposed elsewhere in this Act, to a penalty of twenty-five (25) percent of the tax ultimately found to be due or one thousand (\$1,000) dollars, whichever is the lesser, to be recovered by the Department of Revenue, as debts of like amount are recoverable by law.

COMMENT. This section has no counterpart in existing law.

SECTION 792. *Failure to Give Notice of Death of Depositor.*—Any bank or other financial institution or depository which fails to give the notice required by Section 742, shall be liable to a penalty of one hundred (\$100) dollars to be recovered by the Department of Revenue as debts of like amount are recoverable by law.

COMMENT. This is in conformity with existing law: Act of 1931, P. L. 690, §2, as amended.

SECTION 793. *False Returns; Misdemeanor.*— Any person who wilfully makes a false return or report required of him under the provisions of this Act shall, in addition to any liability imposed elsewhere in this Act, be guilty of a misdemeanor, and on conviction thereof, shall be sentenced to pay a fine not exceeding one thousand (\$1,000) dollars or undergo imprisonment not exceeding one year, or both.

COMMENT. This section has no counterpart in existing law.

ARTICLE VIII
COLLECTION OF TAX

A. Lien of Tax

SECTION 801. *Lien—Duration.*—The taxes imposed by this Act, together with any interest thereon, shall be a lien upon the real property included in the transfer on which the tax is imposed. Except as otherwise provided in this article, the lien shall remain until the taxes and interest are paid in full.

COMMENT. This is suggested by Act of 1919, P. L. 521, §§3, 39, as amended. Regardless of this section, presumption of payment may arise after 20 years: *Mellon Ap.*, 114 Pa. 564; *Monroe's Est.*, 4 D. & C. 8.

SECTION 802. *Limited and Future Interests.*—In the case of a transfer of any estate, income, or interest (1) for a term of years, for life, or for other limited period, or (2) constituting a future interest, the taxes imposed by this Act, together with any interest on the tax, shall remain a lien until paid upon the entire real property by which the estate, income, or interest is supported, or of which it is a part.

COMMENT. This is suggested by Act of 1919, P. L. 521, §§3, 39, as amended. The tax on the limited interest and/or that on the future interest, is a lien on the entire property transferred: cf. *Oberholzer's Est.*, 49 D. & C. 230.

SECTION 803. *Sale to Purchaser, Mortgagee or Lessee.*—Unless suit for collection of the taxes imposed by this Act is instituted within twenty (20) years after the tax becomes delinquent, the lien shall cease as to any purchaser, mortgagee, or lessee of a devisee or heir of, or beneficiary under a deed of trust of, the real property subject to the lien; provided that, at any time within said twenty (20) year period, if the taxes on the real property are not paid, the Department of Revenue shall have power to file a certificate, under its seal, certifying to such nonpayment, which, when filed in the office of the clerk of the county where such real property is situated, shall become a lien against decedent's real estate for a further period of five (5) years from the date of such filing, and such lien shall be indexed

in the judgment index in the name of the decedent as defendant; and provided further that, if the taxes on the real property are not paid within the additional period of five (5) years, the Department of Revenue shall have power to extend the lien for additional periods of five (5) years by filing a certificate in the manner aforesaid.

COMMENT. This is suggested by the Act of 1919, P. L. 521, §39, as amended. Existing law provides for filing of the certificate in the office of the prothonotary.

SECTION 804. *Sale by Fiduciary.*—If real property subject to the lien of taxes imposed by this Act is sold or exchanged by a fiduciary who is subject to the jurisdiction of the court, the lien shall cease as to such property.

COMMENT. This section represents an addition to existing law: cf. Act of 1939, P. L. 619, §1; *Brown's Est.*, 5 Dist. 286. It conforms with the policy of making title to property to be sold by a fiduciary readily marketable. See Fiduciaries Act of 1949, §§547, 615.

SECTION 805. *Sale by Heir or Devisee.*—If real property subject to the lien of taxes imposed by this Act is sold or exchanged or otherwise disposed of by an heir or devisee and if the inheritance tax, together with interest thereon, is paid on all property reported in the tax return including the property sold, which property has been appraised and tax assessed thereon, the lien of any unpaid tax imposed by this Act shall cease as to the property sold.

COMMENT. This section has no counterpart in existing law: cf. Act of 1939, P. L. 619, §1. It conforms with the policy of making title to property readily marketable and is suggested to some extent by Section 615 of the Fiduciaries Act of 1949.

SECTION 806. *Sale of Property Transferred Inter Vivos.*—When real property or any income or interest therein has been transferred within the meaning of Sections 221-226 and the transferee has sold, mortgaged, or leased such property, or any income or interest therein, the interest of a bona fide purchaser, mortgagee, or lessee in such property shall not be subject to a lien for the taxes imposed by this Act.

COMMENT. This has no counterpart in existing law. It conforms with the policy of making real property readily marketable.

SECTION 807. *Subordination of Lien.*—If real property subject to the lien is mortgaged, or leased by a fiduciary who is subject to the jurisdiction of the court, the lien shall become subject and subordinate to the rights and interests of the mortgagee, lessee, or other person so secured.

COMMENT. See comment to Section 804.

SECTION 808. *Cessation Upon Approval of Bond.*—Upon approval of bond for the payment of taxes imposed upon a future interest in a transfer, the lien upon the real property supporting the future interest shall cease. The amount of the bond shall not exceed the value of the real property so transferred.

COMMENT. This is suggested by Act of 1919, P. L. 521, §3, as amended.

SECTION 809. *Release of Lien—No Tax Due.*—In the case of a transfer, other than by will or intestacy, the Secretary of Revenue upon satisfactory proof that no taxes are due which would be a lien on the real property transferred by reason of the death of the transferor, may release all or any portion of such property from any lien imposed by this Act to which the property otherwise might be subject.

A certificate by the Secretary of Revenue to the effect that any real property or interest therein has been released from any lien imposed by this Act shall be conclusive evidence as to any bona fide purchaser, encumbrancer, or lessee of said property that the property described in the certificate has been released.

COMMENT. This section has no counterpart in the Act of 1919, P. L. 521, as amended.

SECTION 810. *Release of Lien—Other Security.*—The Secretary of Revenue may at any time release all or any portion of the real property subject to any lien imposed by this Act from such lien, or subordinate such lien to other liens and encumbrances, if he determines that the taxes are sufficiently secured by a lien on other property of the decedent or that the release or subordination of such lien will not endanger or jeopardize the collection of said taxes.

A certificate by the Secretary of Revenue to the effect that any property subject to any lien imposed by this Act has been released from such lien or that such lien has been subordinated to other liens and encumbrances shall be conclusive evidence as to any bona fide purchaser, encumbrancer or lessee that such lien has been released or subordinated.

COMMENT. This is suggested by Internal Revenue Code of 1954, §6325(b) (1).

SECTION 811. *Release of Lien—Partial Payment.*—When inheritance tax in respect to the transfer of particular real property is paid on the value of such property without diminution for any deductions authorized by this Act, other than a mortgage thereon existing at the date of decedent's death, the Secretary of Revenue upon request of a party in interest shall issue a certificate evidencing the release of such property from the lien of tax.

COMMENT. This has no counterpart in existing law. It is suggested by Internal Revenue Code of 1954, §6325(b) (2) (A), and, like Sections 809 and 810 of this Act, should facilitate the transfer of title to real property.

NOTE: This article changes existing law in another respect, viz., there is no requirement that waivers be obtained preliminary to the transfer of stock in Pennsylvania corporations. Prior law included such a requirement: Fiscal Code, §1203, as amended by Act of 1951, P. L. 1277, 72 PS §1203 (1957 supp.).

B. Enforcement—Procedure

SECTION 821. *Citation.*—The court, at the request of the register, Secretary of Revenue or Attorney General, shall issue a citation, directed to those liable for the payment of the taxes or subject to any other duty imposed by this Act, commanding such person or persons to appear and show cause why the requirements of this Act should not be met.

COMMENT. This is suggested by Act of 1919, P. L. 521 §§15 and 29, as amended. For procedure for citations and service thereof, see Orphans' Court Act of 1951, §§704-706.

SECTION 822. *Decrees.*—The court may issue such decrees as are warranted by the facts, according to equity.

COMMENT. This is in conformity with existing law, and is suggested by Act of 1919, P. L. 521, §§15 and 29, as amended.

SECTION 823. *Citation—When Issuable.*—A citation to enforce payment of taxes due under this Act or compliance with the duties required by this Act, shall be issued by the court upon application of the register, Secretary of Revenue or Attorney General whenever:

- (1) a tax return is not filed within the time required by this Act;
- (2) any tax due under this Act remains delinquent;
- (3) a Federal estate tax return has been filed, but a copy thereof or a communication making a final change therein has not been filed as required by Section 732, or
- (4) any other duty imposed by this Act remains unperformed.

COMMENT. This section has no counterpart in existing law, but is suggested by Act of 1919, P. L. 521, §15, as amended. Provisions relating to the enforcement of decrees of the orphans' court are found in Orphans' Court Act of 1951, §§751-756.

SECTION 824. *Subpoenas.*—The register or Secretary of Revenue may issue subpoenas to compel the production of documents and the attendance of witnesses necessary for the administration of this Act.

COMMENT. This is suggested by Act of 1923, P. L. 1078, §3. Provisions concerning enforcement of subpoenas are found in Section 205 of the Register of Wills Act of 1951.

SECTION 825. *Property Subject to Execution.*—Execution may be issued by the court against any real property in the decedent's estate on which a lien for the payment of the taxes imposed by this Act exists, or against any property belonging to a transferee liable for the tax.

COMMENT. This section has no counterpart in the Act of 1919, P. L. 521, as amended. See Orphans' Court Act of 1951, §§751-756.

SECTION 826. *Reciprocity with Other States.*—The Secretary of Revenue may bring suits in the courts of other states to collect death taxes (including interest and penalties

thereon) payable under this Act. An official of another state which extends a like comity to this Commonwealth may sue for the collection of death taxes (including interest and penalties thereon) in the courts of this Commonwealth. A certificate by the Secretary of State of another state, under the seal of that state, that an official has authority to collect its death taxes shall be conclusive evidence of the authority of such official in any suit for the collection of such taxes in any court of this Commonwealth.

COMMENT. This is in conformity with existing law, and is suggested by Act of 1919, P. L. 521, §29, and Fiscal Code, §1406, Act of 1929, P. L. 343, §1406.

ARTICLE IX

REFUND OF TAX—OVERPAYMENT

SECTION 901. *When Refunds Will Be Made.*—A refund shall be made of any tax to which the Commonwealth is not rightfully or equitably entitled, provided (1) the Commonwealth determines the refund is due, or (2) application for refund is made within the appropriate time limit as set forth in Section 904.

COMMENT. There is no requirement that the overpayment be made under protest. When a refund is clearly due, the Commonwealth shall pay it without formal application by the taxpayer.

SECTION 902. *Interest.*—Interest shall be allowed on tax to which the Commonwealth is not rightfully or equitably entitled at the rate of four (4) percent per year, from the date such tax was paid.

COMMENT. Interest is not allowed under existing law.

SECTION 903. *Form of Refund.*—Refund shall be made in cash to the party who paid the tax or to his assignee, or as directed by the court.

COMMENT. This is a change in existing law to provide for refund by cash or check, but not by a credit certificate as is presently done: see Act of 1935, P. L. 1026, §1; Fiscal Code §503(a), Act of 1929, P. L. 343, §503, as amended; cf. Act of 1919, P. L. 521, §40.

SECTION 904. *Time for Claiming Refund.*—Application for refund of tax to which the Commonwealth is not rightfully or equitably entitled shall be made within two (2) years after:

- (1) the court shall have rescinded its order and adjudication of presumed death when refund is claimed for tax paid on the transfer of the estate of a presumed decedent who is later determined to be alive;
- (2) termination of litigation establishing a right to a refund;
- (3) it has been finally determined that the whole or any part of an alleged deficiency tax, asserted by the Federal government beyond that admitted to be payable, was not payable, and in consequence of which an estate tax was paid under Sections 421 or 431;
- (4) a final judgment holding that a provision of this Act under which tax has been paid is unconstitutional, or that the interpretation of a provision of this Act under which tax has been paid was erroneous;
- (5) the date of payment, or the date of the assessment of the tax, or the date the tax became delinquent, whichever occurs later, in all other cases.

COMMENT. Clause (1) extends the six month limitation in existing law: Fiscal Code §503(a) (3), (72 PS §503) and Act of 1921, P. L. 893, §1. Clause (2) is suggested by Fiscal Code §503(a) (2); cf. Act of 1919, P. L. 521, §13, as amended. Clause (3) is suggested by Act of 1935, P. L. 1026, §1. Both clauses (2) and (3) extend the limitation found in existing law. Clause (4) shortens the five-year limitation in existing law: Fiscal Code §503(a) (4). Clause (5) is suggested by Fiscal Code §503(a) and Act of 1919, P. L. 521, §40, and is intended to allow a refund whenever a tax has been paid to which the Commonwealth is "not rightfully or equitably entitled." Examples of such payments are those made by a transferee whose status within Sections 302, 403 or 404 is disputed, when it is later determined that the rate should have been lower or that there should have been no tax (cf. Act of 1899, P. L. 20, §1), or payments made before final assessment which are in fact overpayments, or payments which are overpayments because deductions are later established (Act of 1919, P. L. 521, §20).

ARTICLE X DISPUTED TAX

A. Appeals and Protests

SECTION 1001. *Appeals; Protest.*—Any party in interest, including the Commonwealth and the personal representative, not satisfied with the appraisalment, the allowance or disallowance of deductions, the assessment of tax, or supplements thereto, within sixty (60) days after receipt of notice of the filing of the appraisalment, the allowance or disallowance of deductions, the assessment of tax, or supplements thereto, as the case may be, may:

- (1) file with the Department of Revenue a written protest thereagainst (a copy of which shall be sent to the Department of Justice); or
- (2) notify the register in writing that he elects to have the correctness of the action complained of determined at audit of the account of the personal representative; or
- (3) appeal to the court to have the correctness of the action complained of determined at the audit of the account of the personal representative, or at such other time as the court shall fix.

The protest, notification, or appeal shall specify all the objections to the action complained of. When the Commonwealth is the party in interest which files the protest, notice to the register, or appeal, a copy thereof shall also be sent to the personal representative and to all other persons who filed a tax return.

SECTION 1002. *Bond.*—No bond shall be required of any party in interest who files a protest against, or appeals from, an appraisalment, allowance or disallowance of a deduction, assessment of tax, or supplements thereto, or from the decision of the Department of Revenue following a protest, or who petitions for removal of the record to the court.

SECTION 1003. *Appeal and Removal from Department of Revenue.*—Any party in interest, including the Commonwealth and the personal representative, not satisfied with the decision of the Department of Revenue upon a protest may appeal therefrom to the court within sixty (60) days after receipt of notice of the entry of the decision of the Department of Revenue. When no decision has been rendered by the Department of Revenue within thirty (30) days after the protest has been filed therewith, the court upon petition of any such party in interest, may direct the Department of Revenue to transmit the entire record to the court. When an appeal is taken from the decision of the Department of Revenue, or the court directs the Department of Revenue to transmit the entire record to the court, the court shall either proceed to a determination of the issues protested to the Department of Revenue or suspend the determination until audit of the account of the personal representative is held.

COMMENT ON ARTICLE X

Under Section 102(4) it is clear that the court to which appeal is taken is the orphans' court of the county where decedent resided if a resident, or, in the case of a nonresident, the orphans' court of the county where letters, if any, were granted, and if none, the Orphans' Court of Dauphin County. The authority of the court to postpone determination of disputed tax until audit is suggested by Section 405 of the Fiduciaries Act of 1949; cf. Act of 1919, P. L. 521, §2, as amended. The elimination of the requirement of bond is new: cf. Act of 1919, P. L. 521, §13. For existing law, see Act of 1919, P. L. 521, §§2, 13, as amended.

ARTICLE XI

ENTRY INTO SAFE DEPOSIT BOX

A. Entry Prohibited

SECTION 1101. *Safe Deposit Box of a Decedent; Definition.*—For the purpose of this Article, "safe deposit box of a decedent" shall mean a safe deposit box, in a financial institution located in Pennsylvania, in the name of the decedent alone or in the names of the decedent and another or others.

SECTION 1102. *Entry Into Safe Deposit Box.*—Except as hereinafter expressly provided, no person having actual knowledge of the death of a decedent shall enter a safe deposit box of a decedent.

SECTION 1103. *Interpretation.*—This Article shall not be construed to confer, upon any person, right of entry into a safe deposit box of a decedent which he does not otherwise have.

B. Entry Without Written Notice to Department
of Revenue Permitted

SECTION 1111. *Entry Into Safe Deposit Box With Bank Employee.*—A safe deposit box of a decedent may be entered, and any or all of the contents removed, in the presence of an employee of the financial institution in which the box is located. An employee of the financial institution shall be present at the entry into the box, and shall make or cause to be made a record of the contents of the box, which record he shall attest under penalty of perjury to be correct and complete. The financial institution may make a reasonable charge for the attendance of its employee at the entry of the box and the listing of the contents, which charge shall be deductible as an administration expense under Section 611 of this Act.

SECTION 1112. *Entry Into Safe Deposit Box With Representative of Department of Revenue.*—A safe deposit box of a decedent may be entered, and any or all of the contents removed, in the presence of a representative of the Department of Revenue authorized by the Secretary of Revenue to so act. The Secretary of Revenue shall authorize at least one such representative in and for each county of the Commonwealth. The representative present at the time of entry into the box shall make or cause to be made a record of the contents of the box.

SECTION 1113. *Entry Into Safe Deposit Box Under Court Order.*—The Court for cause shown may order that a designated person or persons be permitted to enter a safe deposit box of a decedent and remove such contents thereof

as are specified in the order, under such supervision as the Court may direct. The order may also require that a record be made of the contents of the box.

SECTION 1114. *Entry Into Safe Deposit Box to Remove Will and Cemetery Deed.*—Nothing in this Article shall prohibit a financial institution from permitting entry into a safe deposit box of a decedent for the sole purpose of removing the decedent's will and evidences of ownership of the burial lot in which the decedent is to be interred, provided that an employee of the financial institution is present at the opening of the box, and makes or causes to be made a record of the documents removed from the safe deposit box during the entry here permitted, and attests such record to be correct and complete under penalty of perjury.

C. Entry Upon Written Notice to Department of Revenue

SECTION 1121. *Entry Into Safe Deposit Box After Notice to Department of Revenue.*—When entry into a safe deposit box of a decedent is not, or cannot be, made under the provisions of Sections 1111, 1112, or 1113, a safe deposit box of a decedent may be entered at such time as shall be fixed in a notice mailed to the Department of Revenue, Harrisburg, Pennsylvania, and to the financial institution in which the box is located, in the manner hereinafter specified. The date fixed for entry and contained in the notice shall not be less than seven (7) days after the date the notice is mailed. A representative of the Department of Revenue may be present at the time fixed for entry, and may make or cause to be made a record of the contents of the box.

GENERAL COMMENT. No attempt is made in this Article to define the "contents" of decedent's safe deposit box which are required to be listed for tax purposes. It is contemplated that the person making the record will confine it to assets which have potential tax significance, and that purely personal possessions which are without monetary value and have no tax significance will be listed without specific description under an appropriate general caption such as "miscellaneous personal papers." See also Section 1141.

SECTION 1122. *Notice to Department of Revenue.*—The notice required under the provisions of Section 1121 shall be delivered to the Post Office Department for mailing in such manner as will provide for a record of the mailing being made by the Post Office Department and a receipt therefor being furnished to the sender. An exact copy of the notice shall be transmitted to the financial institution in which the box is located.

SECTION 1123. *Exoneration of Financial Institution.*—At the time fixed in the notice required by Section 1122, although no representative of the Department of Revenue is present, it shall be lawful for a financial institution in which a safe deposit box of a decedent is located to permit entry, and it shall permit entry, into the box and removal of its contents, by a person who furnishes a signed statement under penalty of perjury that he or someone in his behalf has given the notice required by Section 1122.

COMMENT. The phrase "it shall be lawful" is, of course, subject to the provisions of Section 1103.

D. Subsequent Entries

SECTION 1131. *Subsequent Entries Into Safe Deposit Box.*—Nothing in this Article shall be construed to impose any restriction upon re-entry into a safe deposit box of a decedent at any time subsequent to an entry made in accordance with any of the provisions of this Article other than Section 1114.

E. Confidential Nature of Contents of Safe Deposit Box

SECTION 1141. *Confidential Information.*—Any information gained from the contents of a safe deposit box by a person whose attendance at the entry into a safe deposit box of a decedent is required by this Article shall be confidential and shall not be disclosed for other than official purposes in connection with the taxes imposed by this Act.

COMMENT. See Fiscal Code, §731, for the preservation of the confidential nature of this information after it has been transmitted to the Secretary of Revenue.

F. Penalties

SECTION 1151. *Penalties; Others Than Bank Employees.*—Any person, other than an employee of a financial institution in which the safe deposit box of a decedent is located, who, having actual knowledge of the death of a decedent, enters a safe deposit box of a decedent in violation of the provisions of this Article shall be guilty of a misdemeanor and on conviction thereof, shall be sentenced to pay a fine not exceeding ten thousand (\$10,000) dollars or undergo imprisonment not exceeding one year, or both.

SECTION 1152. *Penalties; Bank Employees.*—Any employee of a financial institution in which the safe deposit box of a decedent is located, who, having actual knowledge of the death of such decedent, enters, or permits the entry by any person into, a safe deposit box of a decedent in violation of the provisions of this Article, shall be guilty of a misdemeanor and on conviction thereof shall be sentenced to pay a fine not exceeding one thousand (\$1,000) dollars.

SECTION 1153. *Disclosure of Confidential Information.*—Any person who violates the provisions of Section 1141 of this Act shall be guilty of a misdemeanor, and on conviction thereof shall be sentenced to pay a fine not exceeding ten thousand (\$10,000) dollars or undergo imprisonment not exceeding one year, or both.

ARTICLE XII

REPEALER

SECTION 1201. *Repeal.*—The following acts and parts of acts and all amendments of each are hereby repealed, but only so far as relates to estates of decedents dying on or after the first day of January, one thousand nine hundred sixty:

(1) The Act, approved the twentieth day of June, one thousand nine hundred nineteen (pamphlet laws five hundred

twenty-one), entitled "An Act providing . . ." with the following exceptions insofar as they are consistent herewith:

- (a) 1919, P. L. 521, §11;
- (b) 1919, P. L. 521, §12;
- (c) 1919, P. L. 521, §14;
- (d) 1919, P. L. 521, §21;
- (e) 1919, P. L. 521, §22;
- (f) 1919, P. L. 521, §23;
- (g) 1919, P. L. 521, §30;
- (h) 1919, P. L. 521, §31.

(2) The Act, approved the fifteenth day of May, one thousand nine hundred forty-five (pamphlet laws five hundred forty-six), entitled "An Act authorizing . . ."

(3) The Act, approved the seventh day of May, one thousand nine hundred twenty-seven (pamphlet laws eight hundred fifty-nine), entitled "A Supplement to . . ."

(4) The Act, approved the ninth day of July, one thousand nine hundred nineteen (pamphlet laws seven hundred ninety-four), entitled "An Act providing . . ."

(5) Sections 203 (h), 503 (a) (2), 503 (a) (3), 503 (a) (4), 725, 726, 1202, 1203, 1401 insofar as it applies to the taxes imposed by this Act, 1406, 1714, 1715, all of the Act, approved the ninth day of April, one thousand nine hundred twenty-nine (pamphlet laws three hundred forty-three), entitled "An Act relating . . ."

(6) The Act, approved the twenty-second day of March, one thousand eight hundred ninety-nine (pamphlet laws twenty) entitled "An Act authorizing . . ."

(7) The Act, approved the twelfth day of June, one thousand eight hundred seventy-eight (pamphlet laws two hundred six) entitled "An Act authorizing . . ."

(8) The Act, approved the fifth day of May, one thousand nine hundred eleven (pamphlet laws one hundred twelve), entitled "An Act providing . . ."

(9) The Act, approved the second day of May, one thousand nine hundred twenty-nine (pamphlet laws one thousand two hundred fifty-eight), entitled "An Act concerning . . ."

(10) Section 1 of the Act, approved the fourth day of May, one thousand nine-hundred twenty-seven (pamphlet law seven hundred twenty-seven), entitled "A Supplement to . . ."

(11) All other acts and parts of acts inconsistent herewith are hereby repealed.

(12) Nothing in this repealer shall affect or impair the lien of any taxes heretofore assessed, or any tax due, owing or payable, or any remedies for the collection thereof or surrender any remedies, powers, rights or privileges acquired by the Commonwealth under the Acts hereby repealed.

COMMENT. Clause (1) repeals the Transfer Inheritance Tax Act of 1919, but saves provisions dealing with (a) compensation of appraisers, (b) appointment and compensation of expert appraisers, (c) records of appraisements and reports thereof, (d) compensation of registers, (e) bond of registers, and (f) monthly returns by registers. Clause (2) repeals the Act of 1945 which provides for compromise of tax in the estates of alleged nonresidents, and which is replaced by section 751 of this Act. Clause (3) repeals the Estate Tax Act of 1927, which is replaced by sections 421-441 of this Act. Clause (4) repeals the free exhibition exemption, which is now embraced within sections 301, 302 and 305 of this Act. Clause (5) repeals provisions of the Fiscal Code dealing with collection of non-resident taxes, reporting of transfers by nonresident decedents, appeal from appraisements, transfer of corporate stock, suit in other jurisdictions for Pennsylvania inheritance and estate tax, refunds of inheritance and estate tax, and lien of inheritance and estate tax, all of which are covered in this Act. Clause (6) repeals an act authorizing refund of collateral inheritance tax when lineal heirs are discovered. Clause (7) repeals an act similar to that repealed by clause (6). Clause (8) repeals an act ending the application of collateral rates to adopted children which, not being an "amendment or supplement" to the Act of 1887, was apparently not repealed by the Act of 1919. Clause (9) repeals the reciprocal exemption from tax of the intangibles of nonresidents, such property now being absolutely exempt under section 306 of this Act. Clause (10) repeals part of an act giving the Secretary of Revenue control over appraisements, this now being covered by Article VII of this Act.

