

Repeals. — Laws 1981, ch. 37, § 97, repealed 7-6-1 to 7-6-9 NMSA 1978, relating to the Banking and Financial Corporations Tax Act, effective January 1, 1982. For present provisions relating to corporate income tax, see Chapter 7, Article 2A NMSA 1978.

ARTICLE 7

Estate Tax

7-7-1. Short title.

Sections 7-7-1 through 7-7-12 NMSA 1978 may be cited as the "Estate Tax Act".

History: 1953 Comp., § 72-33-1, enacted by Laws 1973, ch. 345, § 1; 1989, ch. 122, § 1.

ANNOTATIONS

Cross references. — For provisions applicable to administration and enforcement, see 7-1-2 and 7-7-10 NMSA 1978.

The 1989 amendment, effective June 16, 1989, substituted "Sections 7-7-1 through 7-7-12 NMSA 1978" for "Sections 1 through 12 of this act".

Construction of tax statutes. — Statutes imposing taxes and providing means for the collection of the same should be construed strictly insofar as they may operate to deprive the citizen of his property by summary proceedings or to impose penalties or forfeitures upon him; but otherwise tax laws ought to be construed with fairness, if not liberality, in order to carry out the intention of the legislature and further the important public interests which such statutes subserve. *NBS Corp. v. Valdez*, 1965-NMSC-027, 75 N.M. 379, 405 P.2d 224.

Law reviews. — For symposium, "Tax Implications of the Equal Rights Amendment," see 3 N.M.L. Rev. 69 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Construction and application of "pay-all-taxes" provision in will, as including liability of nontestamentary property for inheritance and estate taxes, 56 A.L.R.5th 133.

7-7-2. Definitions.

As used in the Estate Tax Act [7-7-1 to 7-7-12 NMSA 1978]:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "certificate" means a certificate of no tax due or a receipt for payment of the tax due under the Estate Tax Act;

C. "decedent" means a deceased individual;

D. "federal credit" means the maximum amount of the credit for estate death taxes allowed by Section 2011 for the decedent's net estate;

E. "gross estate" means "gross estate" as defined and used in Section 2031 of the United States Internal Revenue Code of 1986, as amended or renumbered;

F. "net estate" means "taxable estate" as defined in Section 2051 of the United States Internal Revenue Code of 1986, as amended or renumbered;

G. "nonresident" means a decedent who was domiciled outside New Mexico at his death;

H. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity and, to the extent permitted by law, any federal, state or other governmental unit or subdivision or agency, department or instrumentality thereof;

I. "personal representative" means the executor or administrator of a decedent or, if no executor or administrator is appointed, qualified and acting, any person who has possession of any property;

J. "property" means property included in the gross estate;

K. "resident" means a decedent who was domiciled in New Mexico at his death;

L. "Section 2011" means Section 2011 of the United States Internal Revenue Code of 1986, as amended or renumbered; and

M. "transfer" means "transfer" as defined and used in Section 2001 of the United States Internal Revenue Code of 1986, as amended or renumbered.

History: 1953 Comp., § 72-33-2, enacted by Laws 1973, ch. 345, § 2; 1974, ch. 27, § 1; 1977, ch. 249, § 63; 1986, ch. 20, § 59; 1989, ch. 122, § 2.

ANNOTATIONS

Cross references. — For Sections 2001, 2011, 2031 and 2051 of the Internal Revenue Code, see 26 U.S.C. §§ 2001, 2011, 2031 and 2051, respectively.

The 1989 amendment, effective June 16, 1989, substituted "'department'" for "'bureau' or 'department'" at the beginning of Subsection A, and substituted "1986" for "1954" in Subsections E, F, L and M.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Diverse adjudications, actual or potential, by courts of different states, as to domicile of decedent as regards taxation, probate of will, administration or distribution of estate, 121 A.L.R. 1200.

What passes under term "personal property" in will, 31 A.L.R.5th 499.

85 C.J.S. Taxation §§ 1797 to 1801, 1824 to 1825.

7-7-3. Residents; tax imposed; credit for tax paid other state.

A. A tax in an amount equal to the federal credit is imposed on the transfer of the net estate of every resident.

B. If any property of a resident is subject to a death tax imposed by another state for which a credit is allowed by Section 2011, and if the tax imposed by the other state is not qualified by a reciprocal provision allowing the property to be taxed in the state of decedent's domicile, the amount of the tax due under this section shall be credited with the lesser of:

(1) the amount of the death tax paid the other state and credited against the federal estate tax; or

(2) an amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of the property subject to the death tax imposed by the other state and the denominator of which is the value of the decedent's gross estate.

History: 1953 Comp., § 72-33-3, enacted by Laws 1973, ch. 345, § 3.

ANNOTATIONS

Cross references. — For the meaning of "Section 2011", see 7-7-2L NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 42 Am. Jur. 2d Inheritance, Estate and Gift Taxes §§ 106 and 122.

Review of decisions of United States supreme court since Union Refrigerator Transit Co. v. Kentucky, 199 U.S. 194, 26 S. Ct. 36, 50 L. Ed. 150 (1905), on situs of personal property for purposes of taxation, 123 A.L.R. 179, 139 A.L.R. 1463, 153 A.L.R. 270.

Deductibility from testator's gross estate, under 26 USCS § 2055, of bequests for public, charitable, and religious uses, 46 A.L.R. Fed. 246.

85 C.J.S. Taxation §§ 1792 et seq., 1819 to 1824, 1929 to 1931.

7-7-4. Nonresidents; tax imposed; exemption.

A. Tax in an amount computed as provided in this section is imposed on the transfer of the net estate located in New Mexico of every nonresident.

B. The tax shall be computed by multiplying the federal credit by a fraction, the numerator of which is the value of the property located in New Mexico and the denominator of which is the value of the decedent's gross estate.

C. For purposes of this section, the following is included as property located in New Mexico:

(1) debts arising from transactions in, or having a business situs in, New Mexico; and

(2) the securities of any corporation or other entity organized under the laws of New Mexico.

D. The transfer of the personal property of a nonresident is exempt from the tax imposed by this section to the extent that the personal property of residents is exempt from taxation under the laws of the state in which the nonresident is domiciled.

History: 1953 Comp., § 72-33-4, enacted by Laws 1973, ch. 345, § 4; 1999, ch. 47, § 8.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, inserted "personal" in two places in Subsection D.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 42 Am. Jur. 2d Inheritance, Estate and Gift Taxes §§ 3 to 4, 59 et seq., and 223.

Deductibility from testator's gross estate, under 26 USCS § 2055, of bequests for public, charitable, and religious uses, 46 A.L.R. Fed. 246.

85 C.J.S. Taxation §§ 1794 to 1795, 1800 to 1802, 1819, 1825.

7-7-5. Tax return.

The personal representative of every estate subject to the tax imposed by the Estate Tax Act [7-7-1 to 7-7-12 NMSA 1978] who is required by the laws of the United States to file a federal estate tax return shall file with the department on or before the date the federal estate tax return is required to be filed, including any extension of time for filing the federal estate tax return:

- A. a return for the taxes due under the Estate Tax Act; and
- B. a copy of the federal estate tax return.

History: 1953 Comp., § 72-33-5, enacted by Laws 1973, ch. 345, § 5; 1989, ch. 122, § 3.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "department" for "bureau" in the undesignated introductory paragraph.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 42 Am. Jur. 2d Inheritance, Estate and Gift Taxes §§ 318 to 322, 327, 335, 342.

85 C.J.S. Taxation §§ 1883 to 1888, 1896 to 1897, 1976, 1982.

7-7-6. Date payment due.

The taxes imposed by the Estate Tax Act [7-7-1 to 7-7-12 NMSA 1978] shall be paid by the personal representative on or before the date the return for the taxes is required by Section 7-7-5 NMSA 1978 to be filed.

History: 1953 Comp., § 72-33-6, enacted by Laws 1973, ch. 345, § 6; 1989, ch. 122, § 4.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "Section 7-7-5 NMSA 1978" for "Section 5 of the Estate Tax Act".

Personal representative is liable for state inheritance tax. *Cosby v. Shackelford*, 408 F.2d 1144 (10th Cir. 1969) (decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 42 Am. Jur. 2d Inheritance, Estate and Gift Taxes §§ 248 to 252, 257, 265, 272.

85 C.J.S. Taxation §§ 1883 to 1888, 1896 to 1897, 1976, 1982.

7-7-7. Interest on amount due; extension of time to file federal return.

Interest, as provided in the Tax Administration Act [Chapter 7 Article 1 NMSA 1978], shall be paid to the state on the amount of tax due under the Estate Tax Act [7-7-1 to 7-7-12 NMSA 1978], from the first day following the day on which payment of the tax would be due in the absence of an extension of time, until the day paid, whether or not

the personal representative is granted an extension of time within which to file the federal estate tax return.

History: 1953 Comp., § 72-33-7, enacted by Laws 1973, ch. 345, § 7.

ANNOTATIONS

Effective dates. — Laws 1973, ch. 345, § 18 made Laws 1973, ch. 345, § 7 effective July 1, 1973.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 42 Am. Jur. 2d Inheritance, Estate and Gift Taxes §§ 248 to 252, 257, 265, 272.

85 C.J.S. Taxation §§ 1883 to 1888, 1896 to 1897, 1976, 1982.

7-7-8. Department to file certificate; final settlement of account.

A. Except as otherwise provided in Subsection B of this section, the department shall file a certificate with the clerk of the county in which the estate or any part of it is located when:

- (1) no taxes imposed by the Estate Tax Act [7-7-1 to 7-7-12 NMSA 1978] are due; or
- (2) the taxes due under the Estate Tax Act have been paid.

B. If the estate is not required to file a federal estate tax return, the filing of a certificate by the department is not required.

C. No court shall allow the final settlement of the account of any personal representative until either a certificate is filed as provided in this section if the estate is required to file a federal estate tax return or the personal representative demonstrates that the estate was not required to file a federal estate tax return.

History: 1953 Comp., § 72-33-8, enacted by Laws 1973, ch. 345, § 8; 1989, ch. 122, § 5.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "department" for "bureau" in the catchline and in the introductory paragraph of Subsection A; added "Except as otherwise provided in Subsection B of this section," at the beginning of the introductory paragraph of Subsection A; added present Subsection B; and redesignated former Subsection B as present Subsection C, while inserting therein "either" and adding all of the language following "section".

7-7-9. Administration not applied for; application or waiver by the department.

A. If no person interested in the estate of a decedent applies for letters testamentary or of administration within thirty days after the death of the decedent, the department may apply to the probate court having jurisdiction for the appointment of an administrator and after a hearing, the probate court shall appoint an administrator of the estate of the decedent.

B. If the administration of the estate of a decedent is not necessary, the department may waive administration. The department shall not waive administration until the taxes due under the Estate Tax Act [7-7-1 to 7-7-12 NMSA 1978] are paid.

History: 1953 Comp., § 72-33-9, enacted by Laws 1973, ch. 345, § 9; 1989, ch. 122, § 6.

ANNOTATIONS

Cross references. — For court having jurisdiction, see 45-1-303 and 45-3-201 NMSA 1978.

The 1989 amendment, effective June 16, 1989, substituted "the department" for "bureau" in the catchline, and substituted "department" for "bureau" throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Dispensing with, or revoking grant of, administration of decedent's estate on ground that administration is not necessary, 70 A.L.R. 386.

85 C.J.S. Taxation § 1896 to 1897.

7-7-10. Administration.

The Estate Tax Act [7-7-1 to 7-7-12 NMSA 1978] shall be administered and enforced as provided in the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

History: 1953 Comp., § 72-33-10, enacted by Laws 1973, ch. 345, § 10.

ANNOTATIONS

Effective dates. — Laws 1973, ch. 345, § 18 made Laws 1973, ch. 345, § 10 effective July 1, 1973.

Cross references. — For provisions applicable to administration and enforcement, see 7-1-2 NMSA 1978.

7-7-11. Sale of property to pay tax.

A personal representative may sell so much of any property as is necessary to pay the taxes due under the Estate Tax Act [7-7-1 to 7-7-12 NMSA 1978]. A personal representative may sell so much of any property specifically bequeathed or devised as is necessary to pay the proportionate amount of the taxes due on the transfer of the property and the fees and expenses of the sale, unless the legatee or devisee pays the personal representative the proportionate amount of the taxes due.

History: 1953 Comp., § 72-33-11, enacted by Laws 1973, ch. 345, § 11.

ANNOTATIONS

Effective dates. — Laws 1973, ch. 345, § 18 made Laws 1973, ch. 345, § 11 effective July 1, 1973.

7-7-12. Liability for failure to pay tax before distribution or delivery.

A. Any personal representative who distributes any property without first paying, securing another's payment of, or furnishing security for payment of the taxes due under the Estate Tax Act [7-7-1 to 7-7-12 NMSA 1978] is personally liable for the taxes due to the extent of the value of any property that may come or may have come into his possession. Security for payment of the taxes due under the Estate Tax Act shall be in an amount equal to or greater than the value of all property that is or has come into the possession of such personal representative, as of the time such security is furnished.

B. Any person who has the control, custody or possession of any property and who delivers any of the property to the personal representative or legal representative of the decedent outside New Mexico without first paying, securing another's payment of, or furnishing security for payment of the taxes due under the Estate Tax Act is liable for the taxes due under the Estate Tax Act to the extent of the value of the property delivered. Security for payment of the taxes due under the Estate Tax Act shall be in an amount equal to or greater than the value of all property delivered to the personal representative or legal representative of the decedent outside New Mexico by such a person.

C. For the purposes of this section, persons who do not have possession of a decedent's property (absent special circumstances) include mortgagees or pledgees, stockbrokers or stock transfer agents, bank and other depositories of checking and savings accounts, safe-deposit companies and life insurance companies.

History: 1953 Comp., § 72-33-12, enacted by Laws 1973, ch. 345, § 12; 1975, ch. 257, § 8-126.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 42 Am. Jur. 2d Inheritance, Estate and Gift Taxes §§ 251 et seq.

Rights and liabilities as between sureties on successive bonds given by executor, administrator, trustee or guardian, 76 A.L.R. 904.

Transmission of fund from ancillary to domiciliary jurisdiction, or liability of sureties on bond given in the latter jurisdiction, as affecting liability of sureties on bond given in the former jurisdiction, 78 A.L.R. 575.

Power or discretion of court, after bond of executor, administrator, or testamentary trustee has been given, to dispense with, discontinue, or modify bond, 121 A.L.R. 951.

Liability of executor or administrator to estate because of overpaying or unnecessarily paying tax, 55 A.L.R.3d 785.

7-7-13, 7-7-14. Reserved.

7-7-15. Short title.

Sections 7-7-15 through 7-7-20 NMSA 1978 may be cited as the "Art Acceptance Act".

History: 1978 Comp., § 7-7-15, enacted by Laws 1983, ch. 209, § 1; 1993, ch. 30, § 13.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "Sections 7-7-15 through 7-7-20 NMSA 1978" for "This act".

7-7-16. Definitions.

As used in the Art Acceptance Act [7-7-15 to 7-7-20 NMSA 1978]:

- A. "board" means the board of regents of the museum of New Mexico;
- B. "decedent" means the deceased individual;
- C. "division" or "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;
- D. "museum" means the museum of New Mexico;

E. "personal representative" means the executor or administrator of a decedent or, if no executor or administrator is appointed, qualified and acting, any person who has possession of any property of the decedent; and

F. "work of art" includes any painting, drawing, print, photograph, sculpture, carving, textile, basketry, artifact, natural specimen, rare book, authors' papers, objects of historical or technical interest or other article of intrinsic cultural value.

History: 1978 Comp., § 7-7-16, enacted by Laws 1983, ch. 209, § 2; 1986, ch. 20, § 60; 1987, ch. 164, § 1.

7-7-17. Payment of estate tax in works of art.

A decedent's estate may pay all or part of any tax owed by the decedent's estate to the state by payment in the form of one or more works of art in the manner provided by the Art Acceptance Act [7-7-15 to 7-7-20 NMSA 1978], provided:

A. the decedent has so directed by a will; or

B. in the absence of a direction in the decedent's will, the personal representative finds that this method of payment is advantageous to the estate.

History: 1978 Comp., § 7-7-17, enacted by Laws 1983, ch. 209, § 3.

ANNOTATIONS

Effective dates. — Laws 1983, ch. 209, § 7 made Laws 1983, ch. 209, § 3 effective July 1, 1983.

7-7-18. Procedure for payment in works of art.

A. The personal representative desiring to pay all or part of an estate tax owed the state in the form of one or more works of art shall first obtain an appraisal of the work acceptable to the federal internal revenue service and shall then notify the museum director in writing of the desire to offer the work to the museum. The board shall, within a reasonable period of time and upon the recommendation of the museum director, notify the personal representative and the division in writing as to whether in the judgment of the board it would be advantageous to the state to accept the one or more works of art as payment or partial payment for the estate tax. The board's decision shall be final and not appealable.

B. Acceptance of a work of art shall be deemed advantageous to the state if its acceptance meets the following criteria:

(1) it encourages growth of the museum's collections by the addition of significant and original works of art;

(2) it furthers the preservation and understanding of the arts traditions which exist in New Mexico;

(3) it furthers the appreciation of arts and cultures by the people of New Mexico; or

(4) it is compatible with the standards and collections policies of the museum.

History: 1978 Comp., § 7-7-18, enacted by Laws 1983, ch. 209, § 4.

ANNOTATIONS

Effective dates. — Laws 1983, ch. 209, § 7 made Laws 1983, ch. 209, § 4 effective July 1, 1983.

7-7-19. Agreement on valuation.

A. If the board finds that it would be advantageous for the state to accept payment in one or more works of art as payment or partial payment for the estate tax, the personal representative shall, as a condition of state acceptance of this method of payment, forward a copy of the proposed valuation to the division. The division shall have forty-five days from the date of the notification of the proposed valuation to object to that valuation.

B. If the division objects to the proposed valuation, it shall set forth the objection in writing and forward it to the personal representative. The personal representative may take into account the division's objections and submit a new valuation for the division's approval. If the division rejects the new valuation within forty-five days of its submission, the state shall be deemed not to accept the proposed method of payment in works of art.

C. If the division does not object to a submitted valuation of a work of art within forty-five days of its submission, the state shall be deemed to have accepted the work of art for the museum collection as complete or partial payment of the estate tax owed and the board shall assume title to that work of art as soon as practicable.

History: 1978 Comp., § 7-7-19, enacted by Laws 1983, ch. 209, § 5.

ANNOTATIONS

Effective dates. — Laws 1983, ch. 209, § 7 made Laws 1983, ch. 209, § 5 effective July 1, 1983.

7-7-20. Credit against tax.