

No. 174, S.]

[Published May 3, 1901.

CHAPTER 245.

AN ACT to amend chapter 355 of the laws of 1899, entitled "an act for a tax on gifts, inheritances, bequests and legacies in certain cases."

The people of the state of Wisconsin represented in senate and assembly do enact as follows:

Tax imposed on personal property over \$10,000. SECTION 1. Section 1 of [chapter] 355 of the laws of 1899 is hereby amended to read as follows: Section 1. A tax shall be and is hereby imposed upon any transfer of any personal property, of the value of ten thousand dollars or over, or of any interest therein, or income therefrom, in trust or otherwise, to any persons or corporations, except any corporation, organized for any religious, charitable or educational purpose, which uses the property so transferred to it solely for the purposes of its organization, in the following cases:

Transfer, by will, from resident of state. First. When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state.

Transfer, by will, from non-resident. Second. When a transfer is by will or intestate law, of property within the state, and the decedent was a non-resident of the state at the time of his death.

Transfer in contemplation of death. Third. When the transfer is of property made by a resident, or by a non-resident when such non-resident's property is within this state, by bargain, sale or gift made in contemplation of the death of the vendor or donor, or intended to take effect, in possession or enjoyment at or after such death.

Transfer before or after passage of act. Fourth. Such tax shall be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any personal property or the income thereof by any such transfer, whether made before or after the passage of this act.

Power of appointment derived from disposition of property, deemed a transfer. Fifth. Whenever any person or corpora-

tion shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possessions or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

Rate of tax. Sixth. The tax so imposed shall be at the rate of five per centum upon the clear market value of such property, except as otherwise prescribed in the next section.

When rate to be one per centum. SECTION 2. Section 2 of chapter 355 of the laws of 1899 is hereby amended to read as follows: Section 2. When the property, or any beneficial interest therein, passes by any such transfer to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of a son or the husband of a daughter, or any child or children adopted as such in conformity with the laws of this state, of the decedent, grantor, donor or vendor or to any child to whom any such decedent, grantor, donor or vendor, for not less than ten years prior to such transfer, stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday and was continuous for said ten years thereafter, "or to any lineal descendant of such decedent, grantor, donor or vendor, born in lawful wedlock or to any lineal descendant of any lawfully adopted child of such decedent, grantor, donor, or vendor," or to any lineal descendant of a brother or sister of such decedent grantor, donor or vendor, such transfer of property shall not be taxable under this act, unless it is of the value of ten thousand dollars or more, in which case it shall be taxable under this act at the rate of one per centum upon the clear market value of such property.

Discount, rate of interest on deferred payment of tax. SECTION 3. Section 4 of chapter 355 of the laws of 1899 is hereby

amended to read as follows: Section 4. If such tax is paid within one year from the accruing thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accruing thereof interest shall be charged and collected thereon at the rate of ten per centum per annum from the time the tax accrued; unless by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax shall not be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which ten per centum shall be charged. In all cases when a bond shall be given under the provisions of section 7 of this act, interest shall be charged at the rate of six per centum from the accrual of the tax, until the date of payment thereof.

Powers of executors, etc., as to payment of tax. SECTION 4. Section 5 of chapter 355 of the laws of 1899 is hereby amended to read as follows: Section 5. Every executor, administrator or trustee shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such administrator, executor or trustee having in charge or in trust, any legacy or property for distribution subject to such tax shall deduct the tax therefrom; and within thirty days therefrom shall pay over the same to the county treasurer, as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value, thereof from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this act, to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the administrator, executor or trustee, and the tax shall remain a lien or charge on such real property until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the legacy might be enforced, or by the district attorney under section fourteen of said act. If any such legacy shall be given in money to any such person for a limited period, the administrator, executor or trustee shall retain the tax upon the whole amount, but if it be not in money he shall make application to the court having jurisdiction of an accounting by him to make

an apportionment if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

Deductions for debts; refund of erroneous payment of tax. SECTION 5. Section 6 of chapter 355 of the laws of 1899 is hereby amended to read as follows: Section 6. If any debt shall be proved against the estate of the decedent after the payment of any legacy, or distributive share thereof, from which any such tax has been deducted, or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required by the order of the county court having jurisdiction thereof on notice to the secretary of state to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to him by the executor, administrator or trustee, if the tax has not been paid to the county treasurer, or repaid by such treasurer or state treasurer, if such tax has been paid to him. When any amount of said tax shall have been paid erroneously into the state treasury, it shall be lawful for the secretary of state, upon satisfactory proofs presented to him of the facts, to require the amount of such erroneous or illegal payment to be refunded to the executor, administrator, trustee, person or persons who have paid any such tax in error from the treasury; or the said secretary of state may order direct and allow the treasurer of any county to refund the amount of any illegal or erroneous payment of such tax out of the funds in his hands or custody to the credit of such taxes and credit him so with the same in his quarterly account rendered to the secretary of state under this act. Provided, however, that all applications for such refunding of erroneous taxes shall be made within one year from the payment thereof.

Appointment of appraiser; determination of value of estates; transfers in trust; over-payments. SECTION 6. Section 11 of chapter 355 of the laws of 1899 is hereby amended to read as follows: Section 11. The county court upon the application of any interested party including the secretary of state, county treasurer, or upon his own motion shall, as often as and whenever occasion may require, appoint a competent person as appraiser to fix the fair market value at the time of the transfer thereof of the property of persons whose estates shall be subject to the payment of any tax imposed by this act. Whenever a transfer of property is made upon which there is, or in any contingency there may be, a tax imposed, such property shall be appraised at its clear market value immediately upon such transfer or as soon thereafter as practicable. The value of

every future or limited estate income, interest or annuity dependent upon any life or lives in being, shall be determined by the rule, method and standard of mortality and value employed by the commissioner of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies, except that the rate of interest for making such computation shall be five per centum per annum. In estimating the value of any estate or interest in property to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made in respect of any contingent incumbrance thereon, nor in respect of any contingency upon the happening of which the estate or property or some part thereof or interest therein might be abridged, defeated or diminished; provided, however that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgment, defeat or diminution of such estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax in respect of the amount or value of the incumbrance when taking effect or so much as will reduce the same to the amount which would have been assessed in respect of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section 6 of said chapter 355, laws of 1899, as herein amended. Where any property shall after the passage of this act be transferred subject to any charge, estate or interest, determinable by the death of any person or at any period ascertainable only by reference to death, the increase of benefit accruing to any person or corporation upon the extinction or determination of such charge, estate or interest shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase of benefit from the person from whom the title to their respective estates or interests is derived. When property is transferred in trust or otherwise and the rights, interests or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon such transfer at the highest rate which, on the happening of any of the said contingencies or conditions would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith out of the property transferred provided, however, that on the happening of any contingency whereby the said property or any part thereof is

transferred to a person or corporation exempt from taxation under the provisions of this act or to a person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this act, with legal interest from the time of payment. Such return of over-payment shall be made in the manner provided by section 6 of said chapter 355. All estates upon remainder or reversion, which vested prior to July first, 1899, but which will not come into actual possession or enjoyment of the person or corporation beneficially interested therein until after the passage of this act shall be appraised and taxed as soon as the person or corporation beneficially interested therein shall be entitled to the actual possession or enjoyment thereof.

Report of appraiser; notice to parties; valuation of future interests; re-appraisal and re-assessment; proceedings for. SECTION 7. Section 13 of chapter 355 of the laws of 1899 is hereby amended to read as follows: Section 13. The report of the appraiser shall be made in duplicate, one of which duplicates shall be filed in the office of the county court and the other in the office of the secretary of state. Upon filing such report in the county court, the county court shall forthwith give twenty days' notice by mail to all persons known to be interested in the estate, including the county treasurer, of the time and place for the hearing in the matter of such report and the county court from such report and other proofs relating to any such estate shall forthwith at the time so fixed, determine the cash value of such estate and the amount of tax to which the same is liable, or the county court without appointing an appraiser upon giving twenty days' notice by mail to all persons known to be interested in the estate including the county treasurer, of the time and place of hearing may at the time so fixed hear evidence and determine the cash value of such estate and the amount of tax to which the same is liable. If the residence or postoffice address of any person interested in any estate is unknown to the executor, administrator or trustee, notice of the hearing in the matter of the report of the appraiser or notice that the county [court] without appointing an appraiser will determine the cash value of an estate shall be given to all such persons by publication of such notice not less than three successive weeks prior to the time fixed for such hearing or determination in such newspaper published within the county as the court shall direct. The commissioner of insurance shall on application of any county court

determine the value of any such future or contingent estates, income or interests therein, limited, contingent, dependent or determinable upon the life or lives of the person or persons in being upon the facts contained in such appraiser's report or upon the facts contained in the county court's finding and determination and certify the same to the county court and his certificate shall be presumptive evidence that the method of computation adopted therein is correct. The secretary of state or any person dissatisfied with the appraisement or assessment and determination of such tax may apply for a rehearing thereof before the county court within sixty days from the fixing, assessing and determination of the tax by the county court as herein provided on filing a written notice which shall state the grounds of the application for a rehearing. The rehearing shall be upon the records, proceedings and proofs had and taken on the hearings as herein provided and a new trial shall not be had or granted unless specially ordered by the county court. The county court shall immediately give notice by mail upon the determination by him as to the value of any estate which is taxable under this act and of the tax to which it is liable to all parties known to be interested therein including the secretary of state. If, however, it appear at this or any stage of the proceedings that any of such parties to be interested in the estate is an infant or an incompetent, the county court shall if the interest of such infant or incompetent is presently involved and is adverse to that of the other persons interested therein appoint a special guardian of such infant, but nothing in this provision shall affect the right of an infant over fourteen years of age or of any one on behalf of an infant under fourteen years of age to nominate and apply for the appointment of a special guardian of such infant at any stage of the proceedings. Within two years after the entry of an order or decree of the county court determining the value of an estate and assessing the tax thereon, the secretary of state may if he believes that such appraisal, assessment or determination has been fraudulently, collusively or erroneously made make application to the circuit judge of the judicial circuit in which the former owner of such estate resided for a re-appraisal thereof. The circuit judge to whom such application is made may thereupon appoint a competent person to re-appraise such estate. Such appraiser shall possess the powers, be subject to the duties and receive the compensation provided by section 11 and 12 of this act. Such compensation shall be payable by the county treasurer out of any funds he may have on account of any tax imposed under the provisions of this act upon the cer-

tificate of the circuit judge appointing him. The report of such appraiser shall be filed in the circuit court for which he was appointed and thereafter the same proceedings shall be taken and had by and before such circuit court as herein provided to be taken and had by and before the county court. The determination and assessment of such circuit court shall supersede the determination and assessment of the county court and shall be filed by such circuit court in the office of the secretary of state and a certified copy thereof transmitted to the county court of the proper county.

Words "estate," "property" and "transfer" defined; transfer of capital stock of real estate corporation. SECTION 8. Section 19 of chapter 355 of the laws of 1899 is hereby amended to read as follows: Section 19. The words "estate" and "property" as used in this act shall be taken to mean the personal property or interest therein of the testator, intestate, grantor, bargainor or vendor passing or transferred to those not herein specifically exempted from the provisions of this act and not as the property or interest therein passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees or vendees and shall include all personal property or interest therein whether situated within or without this state. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift in the manner herein prescribed. The words "county treasurer" and "district attorney" as used in this act shall be taken to mean the treasurer and district attorney of the county of the county court having jurisdiction as provided in section 10 of this act; provided that no language in this act shall be construed as imposing any tax upon the transfer of real property. "In case of any transfer of any shares of capital stock in any corporation organized under the laws of this state engaged in the business of buying, owning or selling real estate, the proportionate assessed value of its real estate within this state shall be deducted from the appraised value of such shares of stock so transferred and taxed as herein provided."

Effect of act. SECTION 9. This act shall not affect or impair any act done or right accruing, accrued or established or any proceeding or suit had or commenced previous to the time this act shall take effect and be in force, but every such act, right suit or proceeding shall remain as valid and effectual as if the provisions amended or repealed had remained in force, but the

subsequent proceedings in actions or proceedings shall conform to the provisions of this act when applicable.

Provisions of act a continuation of existing laws. SECTION 10. The provisions of this act so far as they are the same in substance as those under existing laws shall be construed as a continuation of such laws and not as a new enactment.

SECTION 11. This act shall take effect and be in force from and after its passage and publication.

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CHAPTER 246.

AN ACT relating to the improvement and payment for improvements on streets bordering upon public parks, public buildings, and public grounds in cities of the first class.

The people of the state of Wisconsin represented in senate and assembly do enact as follows:

Expense of improvement, how paid; construction of act. SECTION 1. In all cities of the first class in this state, whenever it shall be duly determined to grade, gravel, macadamize, curb, pave or repave or otherwise improve any street, avenue, highway or alley contiguous to or bordering upon any public park, public building or public grounds therein, or to repair any sidewalk, or to lay water pipe or sewer in such street, avenue, highway or alley, the cost of making such improvements and the laying of such water pipe or sewer and the expense of repairs of such sidewalks, shall be chargeable to such contiguous or bordering public park, public building or public grounds, in the same manner, and to the same extent, as if such public park, public building or public grounds were private property, and the amount so chargeable shall be paid out of the general city fund of such city. Provided, however, that nothing herein contained shall be construed to repeal, modify, supersede or amend the provisions of chapter 199 of the laws of 1899 entitled "An act relating to special assessments for grading, macadamizing, and improving streets in cities of the first class."