

judge or jury or to which he pleads guilty or *nolo contendere in a court of record, may be recommitted after hearing before the board to the institution from which he was paroled or to any other institution to which legally transferred as a parole violator. If he is so recommitted, he shall be given credit for the time served on parole in good standing but with no credit for delinquent time, and may be reentered to serve the remainder of his original sentence or sentences. Said remainder shall be computed by the board from the time his delinquent conduct occurred for the unexpired period of the maximum sentence imposed by the court without credit for the period the parolee was delinquent on parole, and he shall be required to serve such remainder so computed from the date he is taken into custody on the warrant of the board. Such prisoner shall be subject to reparole by the board whenever in its opinion the best interests of the prisoner justify or require his being repared and it does not appear that the interests of the Commonwealth will be injured thereby.

Section 6. All acts or parts of acts inconsistent herewith are hereby repealed.

Inconsistent acts repealed.

Section 7. This act shall, to the extent permitted by the Constitution, become effective immediately upon its final enactment.

Act, to extent permitted by Constitution, effective immediately.

APPROVED—The 24th day of August, A. D. 1951.

JOHN S. FINE

No. 338

AN ACT

Relating to the apportionment of estate taxes and providing procedure for enforcement of contribution or exoneration.

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

"Estate Tax Apportionment Act of 1951."

Section 1. 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) "Person" includes a corporation, partnership and association, as well as a natural person, whether acting in a separate or in a fiduciary capacity.

(2) "Estate Tax" means gross Federal estate tax, including interest and penalty thereon.

(3) "Persons interested in property includible in gross estate" includes persons liable for payment of estate tax and persons whose property is subject to a

* "nolle" in original.

lien for the estate tax. It includes personal representatives, guardians and trustees, individual or corporate.

(4) "Gross Estate" means all property of every description required to be included in computing the estate tax.

(5) "Fiduciary" includes executors, administrators of any description and trustees.

Section 2. Equitable Apportionment.—Estate tax, except as provided in subsection (a) of section three, shall be apportioned equitably, as near as may be in accordance with the principles hereinafter stated, among all persons interested in property includible in gross estate, whether residents or nonresidents of the Commonwealth, and they shall pay the amounts apportioned against them.

Section 3. General Rules.—

(a) Powers of Testator or Settlor. A testator, settlor, or possessor of any appropriate power of appointment may direct how the estate tax shall be apportioned or allocated or grant a discretionary power to another so to direct. Any such direction shall take precedence over the provisions of this act insofar as the direction provides for the payment of the estate tax or any part thereof from property, the disposition of which can be controlled by the instrument containing the direction or delegating the power to another.

(b) Present and Remainder Interests. When estate tax shall be apportioned in a situation involving both a present and future interest, the amount apportioned, including interest and penalties, shall be paid entirely from principal, even though the holder of the present interest also has rights in the principal.

(c) Separate Apportionment of Interest and Penalties—Special Circumstances. When the orphans' court shall find that it is inequitable to apportion interest and penalties in the same manner as the principal of the estate tax by reason of special circumstances, it may direct apportionment of interest and penalties in a manner different from principal.

Section 4. Method of Apportionment.—

(a) Basis of Apportionment. Apportionment of the estate tax, except as provided in section three, shall be made among the persons interested in property includible in gross estate in the proportion that the value of the interest of each such person bears to the value of the net estate before exemption. The values used in determining the amount of tax liability shall be used for this purpose.

(b) Treatment of Deductions and Credits. The following principles shall apply with respect to deductions and credits allowable: (1) Deductions Allowed by Fed-

eral Revenue Laws in Determining the Value of Decedent's Net Estate. Any interest for which deduction is allowable under Federal revenue laws in determining the value of decedent's net estate, such as property passing to or in trust for a surviving spouse and charitable, public or similar gifts or bequests to the extent of the allowed deduction, shall not be included in the computation provided in subsection (a) of section four hereof, and to that extent no apportionment shall be made against such interest, except that when such an interest is subject to a prior present interest which is not allowable as a deduction, the estate tax apportionable against the present interest shall be paid from principal.

(2) Property Previously Taxed and Gift Tax. Any deduction for property previously taxed and any credit for gift taxes or taxes of a foreign country paid by the decedent or his estate shall inure to the proportionate benefit of all persons liable to apportionment.

(3) Credit for State Taxes. Any credit for inheritance, succession or estate taxes or taxes in the nature thereof in respect to property or interests includible in the gross estate shall inure to the benefit of the persons or interests chargeable with the payment of such taxes to the extent or in proportion that the tax paid or payable reduces the estate tax.

(4) Inheritance or Death Tax Effect. To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar gift or bequest does not constitute an allowable deduction solely by reason of an inheritance tax or other death tax imposed upon and deductible from such property, it shall not be included in the computation provided for in subsection (a) of section four hereof, and to that extent no apportionment shall be made against such property.

Section 5. Enforcement of Contribution or Exoneration.—

(a) Fiduciary's Duty. The fiduciary charged with the duty to pay the tax shall be entitled, and it shall be his duty to recover, from persons liable to apportionment or from whoever is in possession of property includible in the gross estate not in the fiduciary's possession, the amounts of tax apportionable thereto.

(b) Suspending Distribution. Distribution of property includible in the gross estate to any person, other than a fiduciary charged with the duty to pay the tax, shall not be required of any fiduciary until the tax apportionable with respect thereto is paid, or if the tax has not been determined and apportionment made, until adequate security for such payment is furnished to the person making such distribution.

(c) Court Decrees. The orphans' court, upon petition or at an accounting or in any appropriate action or proceeding, shall make such decrees or orders as it shall deem advisable apportioning the tax. It may also direct a fiduciary to collect the apportioned amounts from the property or interest in his possession of any persons against whom such apportionment has been made and direct all other persons against whom the tax has been or may be apportioned or from whom any part of the tax may be recovered to make payment of such apportioned amounts to the fiduciary. When it is ascertained that the fiduciary holds property of the person liable to apportionment insufficient to satisfy the apportioned tax, the court may direct that the balance of the apportioned amount of tax shall be paid to the fiduciary by the person liable. Should an overpayment of the tax be made by any person or on his behalf, the court may direct an appropriate reimbursement for the overpayment. If the fiduciary cannot recover the tax apportioned against a person benefited, such an unrecovered amount shall be charged in such manner as the orphans' court may determine.

Section 6. Severability.—If any provision of this act or the application thereof to any person or circumstance 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.

Section 7. Short Title.—This act shall be known and may be cited as the "Estate Tax Apportionment Act of 1951."

Section 8. Repeals.—Section forty-eight point one of the act, approved the seventh day of June, one thousand nine hundred seventeen (Pamphlet Laws 447), entitled, as amended "An act relating to the administration and distribution of the estates of decedents and of minors, and of trust estates; including the appointment, bonds, rights, powers, duties, liabilities, accounts, discharge and removal of executors, administrators, guardians, and trustees, herein designated as fiduciaries; the administration and distribution of the estates of presumed decedents; widow's and children's exemptions; debts of decedents, rents of real estate as assets for payment thereof, the lien thereof, sales and mortgages of real estate for the payment thereof, judgments and executions therefor, and the discharge of real estate from the lien thereof; contracts of decedents for the sale or purchase of real estate; legacies, including legacies charged on land; the discharge of residuary estates and of real estate from the lien of legacies and other charges; the appraisal of real estate devised at a valuation; the

ascertainment of the curtilage of dwelling houses or other buildings devised; the abatement and survival of actions, and the substitution of executors and administrators therein; the survival of causes of action and suits thereupon by or against fiduciaries; investments by fiduciaries; the organization of corporations to carry on the business of decedents; the audit and review of accounts of fiduciaries; refunding bonds; transcripts to the court of common pleas of balances due by fiduciaries; the rights, powers, and liabilities of nonresident and foreign fiduciaries; the appointment, bonds, rights, powers, duties, and liabilities of trustees *durante absentia*; the recording and registration of decrees, reports and other proceedings, and the fees therefor; appeals in certain cases; and, also, generally dealing with the jurisdiction, powers, and procedure of the orphans' court in all matters relating to fiduciaries concerned with the *estates of decedents," as added by the act, approved the second day of July, one thousand nine hundred thirty-seven (Pamphlet Laws 2762) is hereby repealed.

Subsection four of section eleven of the act, approved the third day of July, one thousand nine hundred forty-seven (Pamphlet Laws 1283), entitled "An act concerning the ascertainment of principal and income; and the apportionment of receipts and expenses among tenants and remaindermen," is hereby repealed insofar as it is inconsistent with the provisions of this act.

All other acts and parts of acts are hereby repealed insofar as they are inconsistent with the provisions of this act.

Section 9. Effective Date.—The provisions of this act shall become effective immediately upon final enactment; and shall apply to the apportionment of estate taxes with respect to any estate for which the original Federal estate tax return is filed thereafter, regardless of when the decedent died.

APPROVED—The 24th day of August, A. D. 1951.

JOHN S. FINE

No. 339

AN ACT

Requiring political subdivisions to satisfy of record at their expense certain lost liens for taxes and municipal claims against real property sold at sheriffs' sales **or county tax claim bureaus' public sales, under certain conditions.

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

* "estate" in original.

** "or" omitted in original.