

TAX CODE CHAPTER 211. INHERITANCE TAXES

TAX CODE

TITLE 2. STATE TAXATION

SUBTITLE J. INHERITANCE TAX

CHAPTER 211. INHERITANCE TAXES

SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

Sec. 211.001. DEFINITIONS. In this chapter:

(1) "Alien" means a decedent who, at the time of the decedent's death, was not domiciled in Texas or any other state of the United States and was not a citizen of the United States.

(2) "Death tax" means an estate, inheritance, legacy, or succession tax.

(3) "Decedent" means a deceased natural person.

(4) "Federal credit" means the maximum amount of the credit for state death taxes allowable under Section 2011, Internal Revenue Code, and, in the case of an alien, under Section 2102, Internal Revenue Code.

(5) "Federal estate tax" means the tax payable to the federal government under Subtitle B, Chapter 11, Internal Revenue Code.

(6) "Federal generation-skipping transfer tax" means the tax payable to the federal government under Subtitle B, Chapter 13, Internal Revenue Code.

(7) "Federal tax" means the federal estate tax and the federal generation-skipping transfer tax.

(8) "Generation-skipping transfer" means a transfer for which a credit for state taxes is allowable under Section 2604, Internal Revenue Code.

(9) "Generation-skipping transfer tax credit" means the maximum amount of the credit for state death taxes allowable under Section 2604, Internal Revenue Code.

(10) "Gross estate" means the gross estate as defined by Sections 2031 through 2045, Internal Revenue Code, and, in the case of an alien, by Section 2103, Internal Revenue Code.

(11) "Nonresident" means a decedent, other than an alien decedent, who was not domiciled in Texas at the time of the

decedent's death.

(12) "Personal representative" means an executor, independent executor, administrator, temporary administrator, trustee, or another person administering the affairs of a decedent's estate.

(13) "Resident" means a decedent who was domiciled in Texas on his date of death.

(14) "Value" means value as finally determined and used for purposes of computing the federal tax.

(15) "Will" includes a codicil and includes a testamentary instrument that appoints an executor or that revokes another will.

Amended by Acts 1981, 67th Leg., p. 2758, ch. 752, Sec. 6(a), eff. Jan. 1, 1982; Acts 1993, 73rd Leg., ch. 1031, Sec. 23, eff. Sept. 1, 1993.

Sec. 211.002. DAY OF DEATH OF PRESUMED DECEDENT. If a court enters a final decree presuming a missing person to be dead, the day of the person's death for the purposes of this chapter is the day on which the court enters the decree establishing the fact of death regardless of the presumed day of death established by the decree. Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982.

Sec. 211.003. REFERENCES TO INTERNAL REVENUE CODE. A citation of or a reference to a subtitle, a chapter, or a section of the Internal Revenue Code of 1954 includes that subtitle, chapter, or section as it exists on September 1, 1981, or as amended after that date and also includes any other provision of the Internal Revenue Code enacted after September 1, 1981, that is similar to or a replacement of the subtitle, chapter, or section cited or referred to. Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982.

SUBCHAPTER B. INHERITANCE TAXES: FEDERAL ESTATE TAX CREDIT AND
GENERATION-SKIPPING TRANSFER TAX CREDIT

Sec. 211.051. TAX ON PROPERTY OF RESIDENT. (a) A tax equal to the amount of the federal credit is imposed on the transfer at death of the property of every resident.

(b) If the estate of a resident is subject to a death tax imposed by another state or states for which the federal credit is allowable, the amount of the tax due under this section is reduced by the lesser of:

(1) the amount of the death tax paid the other state or states and that is allowable as the federal credit; or

(2) an amount determined by multiplying the federal credit by a fraction, the numerator of which is the value of the resident's gross estate less the value of the property of a resident, as defined by Section (c) of this section, that is included in the gross estate and the denominator of which is the value of the resident's gross estate.

(c) Property of a resident includes real property having an actual situs in this state whether or not held in trust; tangible personal property having an actual situs in this state; and all intangible personal property, wherever the notes, bonds, stock certificates, or other evidence, if any, of the intangible personal property may be physically located or wherever the banks or other debtors of the decedent may be located or domiciled; except that real property in a personal trust is not taxed if the real property has an actual situs outside this state.

Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982.

Sec. 211.052. TAX ON PROPERTY OF NONRESIDENT. (a) A tax is imposed on the transfer at death of the property located in Texas of every nonresident.

(b) The tax is an amount determined by multiplying the federal credit by a fraction, the numerator of which is the value of the property located in Texas that is included in the gross estate and the denominator of which is the value of the nonresident's gross estate.

(c) Property located in Texas of a nonresident includes real property having an actual situs in this state whether or not held in

trust and tangible personal property having an actual situs in this state, but intangibles that have acquired an actual situs in this state are not taxable.

Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982.

Sec. 211.053. TAX ON PROPERTY OF ALIEN. (a) A tax is imposed on the transfer at death of the property located in Texas of every alien.

(b) The tax is an amount determined by multiplying the federal credit by a fraction, the numerator of which is the value of the property located in Texas that is included in the gross estate and the denominator of which is the value of the alien's gross estate.

(c) Property located in Texas of an alien includes real property having an actual situs in this state whether or not held in trust; tangible personal property having an actual situs in this state; and intangible personal property if the physical evidence of the property is located within this state or if the property is directly or indirectly subject to protection, preservation, or regulation under the law of this state, to the extent that the property is included in the decedent's gross estate.

Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982.

Sec. 211.054. TAX ON PROPERTY INCLUDED IN GENERATION-SKIPPING TRANSFER. (a) A tax is imposed on every generation-skipping transfer.

(b) The tax is an amount determined by multiplying the generation-skipping transfer tax credit by a fraction, the numerator of which is the value of the property located in Texas included in the generation-skipping transfer and the denominator of which is the value of all property included in the generation-skipping transfer.

(c) Property located in Texas includes real property having an actual situs in this state whether or not held in trust; tangible personal property having an actual situs in this state;

and tangible personal property owned by a trust having its principal place of administration in this state at the time of the generation-skipping transfer.

Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982.

Sec. 211.055. MAXIMUM TAX. The amount of tax imposed by this chapter may not exceed the amount of the tax imposed under Section 2001, Internal Revenue Code, reduced by the unified credit provided under Section 2010, Internal Revenue Code.

Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982; Acts 2001, 77th Leg., ch. 1263, Sec. 73, eff. Sept. 1, 2001.

Sec. 211.056. COOPERATION WITH INTERNAL REVENUE SERVICE.

(a) The comptroller shall confer with the Internal Revenue Service of the United States to determine the value of a decedent's estate that is located in this state and that is valued by the United States for tax purposes.

(b) The comptroller shall cooperate with the Internal Revenue Service on matters relating to a decedent's estate located in this state. The comptroller may exchange information with the service about these matters.

Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982.

SUBCHAPTER C. COLLECTION AND PAYMENT OF TAX

Sec. 211.101. PAYMENT: BY WHOM MADE. The personal representative of a decedent's estate or other person liable for the tax shall pay to the comptroller a tax determined under this chapter on the estate.

Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982; Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, Sec. 1, eff. Jan. 1, 1982.

Sec. 211.102. DAY ON WHICH PAYMENT IS DUE. Except as provided by Sections 211.103 and 211.104(b), payment of a tax

imposed by Section 211.051, 211.052, or 211.053 of this code on a decedent's estate is due nine months after the day of the decedent's death.

Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982; Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, Sec. 1, eff. Jan. 1, 1982; Acts 1997, 75th Leg., ch. 1040, Sec. 57, eff. Sept. 1, 1997.

Sec. 211.103. POSTPONEMENT OF DAY ON WHICH PAYMENT IS DUE.

(a) If the date of the filing of the federal estate or generation-skipping transfer tax return is extended by the Internal Revenue Service, the filing of the return required by Section 211.106 of this code is due on the date specified by the Internal Revenue Service in granting any request for extension. If the date of payment of the federal estate or generation-skipping transfer tax is extended by the Internal Revenue Service, the personal representative of the estate may request an extension of the due date of the tax imposed by Section 211.051, 211.052, 211.053, or 211.054 of this code on or before the due date of the payment. An extension of the due date may be granted upon a showing of good cause. The personal representative of the estate shall notify the comptroller within 30 days after an extension granted by the Internal Revenue Service.

(b) If an extension request is denied by the Internal Revenue Service or the comptroller, the return required under this chapter must be filed based on the best information available at that time. The return must be filed and any tax and interest estimated to be due must be paid within 10 days after the date of the denial to avoid the imposition of penalties under this chapter.

Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982; Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, Sec. 1, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 439, ch. 90, Sec. 1, eff. Sept. 1, 1983; Acts 1987, 70th Leg., 2nd C.S., ch. 1, Sec. 10, eff. July 21, 1987.

Sec. 211.104. REPORT OF DETERMINATION OF FEDERAL TAX.

(a) Within 30 days after receiving notice or information of the

final assessment and determination of the value of the taxable estate assessed and determined by the federal government for the purpose of fixing federal estate taxes on that estate, the personal representative shall make to the comptroller a report of the value of the estate as so fixed and determined. The report shall be made in a form and contain information as the comptroller directs.

(b) Any additional tax due by a decedent's estate as a result of an Internal Revenue Service audit or federal tax court decision shall be paid to the comptroller not later than the 30th day after the date the personal representative receives the notice or information of the final assessment and determination of value of the taxable estate by the federal government for the purpose of fixing federal estate taxes on that estate. The comptroller shall issue a determination if any additional amounts owed to the comptroller are not remitted with a copy of the audit or tax court changes.

Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982; Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, Sec. 1, eff. Jan. 1, 1982; Acts 1997, 75th Leg., ch. 1040, Sec. 58, eff. Sept. 1, 1997.

Sec. 211.105. DATE DUE OF TAXES ON GENERATION-SKIPPING TRANSFERS. The taxes on generation-skipping transfers are due and payable at the same time as the federal tax on generation-skipping transfers.

Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982; Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, Sec. 1, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 440, ch. 90, Sec. 2, eff. Sept. 1, 1983.

Sec. 211.106. RETURNS. A payment shall be accompanied by a copy of the federal estate or generation-skipping transfer tax return filed with the Internal Revenue Service and the Texas tax return containing any information the comptroller considers necessary for the enforcement of this chapter. In the event no federal estate or generation-skipping transfer tax has been paid or is due and no federal estate or generation-skipping transfer tax

return must be filed, the filing of a Texas tax return is not required by this chapter.

Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982; Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, Sec. 1, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 441, ch. 90, Sec. 3, eff. Sept. 1, 1983.

Sec. 211.107. RECEIPT FOR PAYMENT. The comptroller shall issue a receipt for payment of a tax imposed by this chapter. The comptroller shall deliver the receipt to the person making the payment or to the person's attorney of record.

Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982. Renumbered from Sec. 211.104 by Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, Sec. 1, eff. Jan. 1, 1982.

Sec. 211.108. PERSONAL LIABILITY. Any person acquiring any property subject to taxation under this chapter, to the extent of the value of all property so acquired, shall be personally liable for the tax imposed by this chapter and be charged with notice of the existence of all of the unpaid taxes, penalties, interest, and costs.

Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982. Renumbered from Sec. 211.107 and amended by Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, Sec. 1, eff. Jan. 1, 1982.

Sec. 211.109. COMPROMISE AGREEMENT ON DOMICILE. (a) If the comptroller claims that a decedent was domiciled in this state at the time of death and a taxing authority of another state claims that the decedent was domiciled in that state at the time of death, the comptroller may agree in writing to a compromise with the other taxing authority and the personal representative of the decedent's estate.

(b) The compromise agreement shall set an amount that is accepted by the comptroller in satisfaction of the tax that is determined under this chapter on the decedent's estate and in satisfaction of any related penalty or interest imposed under this

chapter before the agreement takes effect. The agreement shall set the amount that the other taxing authority accepts in satisfaction of a death tax, penalty, or interest.

(c) To be valid, the agreement must be approved by the attorney general.

Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982; Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, Sec. 1, eff. Jan. 1, 1982.

Sec. 211.110. FORMS. The comptroller shall prescribe a form for a tax return or report required by this chapter and shall prescribe other forms that request information necessary for the comptroller to collect the taxes imposed by this chapter.

Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982. Renumbered from Sec. 211.155 by Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, Sec. 1, eff. Jan. 1, 1982.

Sec. 211.111. LIMITATIONS. (a) The period of limitation provided under Section 111.201 does not begin to run in favor of a decedent's estate, the estate's personal representative, a transferee, a distributee, or any other person liable under Section 211.108 or 211.201 until the tax liability of the decedent's estate becomes final. If an extension of time for filing the return or paying the tax is granted to the decedent's estate by the comptroller under Section 211.103, the extension tolls the beginning of the limitation period for the estate's personal representative, transferees, distributees, and other persons.

(b) A limitation period does not begin to run in favor of a decedent's estate, any personal representative, transferee, distributee, or other person until the comptroller receives the notice or information of the final assessment and determination of the value of the decedent's estate for purpose of fixing federal estate taxes on that estate, as required under Section 211.104.

(c) If property is transferred from a decedent's estate after the comptroller receives notice or information as required under Section 211.104 of the final assessment and determination of the value of the estate by the federal government and the tax

remains unpaid, the limitation period does not begin to run in favor of a person liable under Section 211.108 or 211.201 until the comptroller learns of the transfer.

Added by Acts 1997, 75th Leg., ch. 1040, Sec. 59, eff. Sept. 1, 1997.

SUBCHAPTER D. TRANSFER OR DELIVERY OF PROPERTY AFTER DECEDENT'S
DEATH

Sec. 211.201. TRANSFER OF PROPERTY BEFORE TAX IS PAID.

(a) If any personal representative of a decedent's estate transfers in whole or in part any of a decedent's property to any person without having paid the tax, penalty, and interest due under this chapter, the personal representative is personally liable for the tax, penalty, and interest to the extent of the value of the property transferred.

(b) A corporation, bank, stock transfer agent, safe deposit institution or other depository or institution, or person in actual or constructive possession of any property of the decedent as agent of the decedent or custodian of the property or any similar relationship such as debtor, bailor, or lessor (other than a personal representative, spouse, transferee, trustee, person in possession of property by reason of the exercise or release of a power of appointment, legatee, devisee, heir, or beneficiary who has received property) shall not be liable for any tax, penalty, or interest imposed by this chapter.

Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982; Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, Sec. 1, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 441, ch. 90, Sec. 4, eff. Sept. 1, 1983.

SUBCHAPTER E. ENFORCEMENT

Sec. 211.251. COMPTROLLER'S AUTHORITY TO EXAMINE BOOKS AND OTHER PROPERTY. The comptroller may examine books, records, documents, or other property of a decedent's estate or of a personal representative, transferee, or distributee of a decedent's estate at any time the examination is necessary for the comptroller to enforce this chapter without regard to the period provided by

Section 111.0041.

Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982; Acts 1997, 75th Leg., ch. 1040, Sec. 60, eff. Sept. 1, 1997.

Sec. 211.258. PENALTY FOR FAILURE TO PAY TAX OR FOR LATE PAYMENT. (a) A person who is liable for a tax imposed by this chapter and who fails to pay the tax when due forfeits five percent of the amount due as a penalty, and if the person fails to pay the tax within 30 days after the day on which the tax is due, the person forfeits an additional five percent.

(b) A penalty is not imposed by this section on a person who is liable for the tax if the person shows to the comptroller that the failure to pay the tax is due to a reasonable cause and not due to wilful neglect.

(c) The minimum penalty under this section is \$1.
Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982. Renumbered from Sec. 211.260 by Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, Sec. 1, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 454, ch. 93, Sec. 10, eff. Sept. 1, 1983.

Sec. 211.259. INTEREST ON TAXES. (a) A tax imposed by this chapter draws interest at the rate set by Section 111.060 of this code.

(b) The interest begins to accrue nine months after the day of the death of the decedent on whose estate the tax is determined or, in the case of taxes on generation-skipping transfers, on the original due date of the taxes.

(c) If the accrued interest is less than \$5, it does not have to be paid.

Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982. Renumbered from Sec. 211.261 and amended by Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, Sec. 1, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 442, ch. 90, Sec. 6, eff. Sept. 1, 1983.

SUBCHAPTER F. DISPOSITION OF REVENUE

Sec. 211.301. GENERAL REVENUE FUND. The revenue from a tax, interest, or penalty imposed by this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

Acts 1981, 67th Leg., p. 1490, ch. 841, Sec. 1. Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, Sec. 6(a), eff. Jan. 1, 1982.