

CHAPTER 198

ESTATE TAXES

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- 198.01 Definitions.**—When used in this chapter the term, phrase or word:
- (1) "Department" means the Department of Revenue.
- (2) "Personal representative" means the executor, administrator, or curator of the decedent, or, if there is no executor, administrator, or curator appointed, qualified, and acting, then any person who is in the actual or constructive possession of any property included in the gross estate of the decedent or any other person who is required to file a return or pay the taxes due under any provision of this chapter.
- (3) "Person" means persons, corporations, associations, joint stock companies, and business trusts.
- (4) "Transfer" shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein described.
- (5) "Decedent" shall include the testator, intestate, grantor, bargainor, vendor, or donor.
- (6) "Resident" means a natural person domiciled in the state.
- (7) "Nonresident" means a natural person domiciled without the state.
- (8) "Gross estate" means the gross estate as determined under the provisions of the applicable federal revenue act.
- (9) "Net estate" means the net estate as determined under the provisions of the applicable federal revenue act.
- (10) "Tangible personal property" means corporeal personal property, including money.
- (11) "Intangible personal property" means incorporeal personal property including deposits in banks, negotiable instruments, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in property, evidences of debt and choses in action generally.
- (12) "United States" when used in a geographical sense includes only the 50 states and the District of Columbia.
- (13) "Generation-skipping transfer" means every transfer subject to the federal generation-skipping transfer tax in which transfer the original transferor is a resident of this state at the date of original transfer or the property transferred is real or personal property in this state.
- (14) "Original transferor" means any grantor, donor, trustor, or testator who by grant, gift, trust, or will makes a transfer of real or personal property that results in a federal generation-skipping transfer tax.

(15) "Federal generation-skipping transfer tax" means the tax imposed by chapter 13 of the Internal Revenue Code of 1986, as amended.

History.—s. 2, ch. 16015, 1933; CGL 1936 Supp. 1342(81); ss. 21, 35, ch. 69-106; s. 44, ch. 71-377; s. 1, ch. 80-153; s. 3, ch. 89-356.

198.015 Domicile of decedent.—

(1) For the purposes of this chapter, every person shall be presumed to have died a resident and not a non-resident of the state:

(a) If such person has dwelt or lodged in the state during and for the greater part of any period of 12 consecutive months in the 24 months next preceding death, notwithstanding the fact that from time to time during such 24 months such person may have sojourned outside of this state, and without regard to whether or not such person may have voted, may have been entitled to vote, or may have been assessed for taxes in this state; or

(b) If such person has been a resident of Florida, sojourning outside of this state.

(2) The burden of proof in an estate tax proceeding shall be upon any person claiming exemption by reason of alleged nonresidency. Domicile shall be determined exclusively in the proceedings provided in this chapter, and orders relating to domicile previously entered in the probate proceedings shall not be conclusive for the purposes of this chapter.

History.—s. 1, ch. 77-411; s. 1031, ch. 95-147.

198.02 Tax upon estates of resident decedents.—

A tax is imposed upon the transfer of the estate of every person who, at the time of death, was a resident of this state, the amount of which shall be a sum equal to the amount by which the credit allowable under the applicable federal revenue act for estate, inheritance, legacy, and succession taxes actually paid to the several states exceeds the aggregate amount of all constitutionally valid estate, inheritance, legacy, and succession taxes actually paid to the several states of the United States (other than this state) in respect of any property owned by such decedent or subject to such taxes as a part of or in connection with his or her estate. All values shall be as finally determined for federal estate tax purposes.

History.—s. 3, ch. 16015, 1933; CGL 1936 Supp. 1342(83); s. 1, ch. 71-202; s. 3, ch. 82-38; s. 1032, ch. 95-147.

198.021 Tax upon generation-skipping transfers of residents.—

A tax is hereby imposed upon every generation-skipping transfer in which the original transferor is a resident of this state at the date of original transfer, in an amount equal to the amount allowable as a credit for state legacy taxes under s. 2604 of the Internal Revenue Code of 1986, as amended, to the extent such credit exceeds the aggregate amount of all constitutionally valid taxes on the same transfer actually paid to the several states of the United States other than this state.

History.—s. 2, ch. 80-153; s. 4, ch. 89-356.

198.03 Tax upon estates of nonresident decedents.—

A tax is imposed upon the transfer of real property situate in this state, upon tangible personal property having an actual situs in this state, upon intangible personal property having a business situs in this state and upon stocks, bonds, debentures, notes, and other

securities or obligations of corporations organized under the laws of this state, of every person who at the time of death was not a resident of this state but was a resident of the United States, the amount of which shall be a sum equal to such proportion of the amount of the credit allowable under the applicable federal revenue act for estate, inheritance, legacy, and succession taxes actually paid to the several states, as the value of the property taxable in this state bears to the value of the entire gross estate wherever situate.

History.—s. 4, ch. 16015, 1933; CGL 1936 Supp. 1342(84); s. 1, ch. 28031, 1953.

198.031 Tax upon generation-skipping transfers of nonresidents.—

A tax is hereby imposed upon every generation-skipping transfer in which the original transferor is not a resident of this state at the date of the original transfer but in which the property transferred includes real or personal property in this state, in an amount equal to the amount allowable as a credit for state legacy taxes under s. 2604 of the Internal Revenue Code of 1986, as amended, reduced by an amount which bears the same ratio to the total state tax credit allowable for federal generation-skipping transfer tax purposes as the value of the transferred property taxable by all other states bears to the value of the gross generation-skipping transfer for federal generation-skipping transfer tax purposes.

History.—s. 3, ch. 80-153; s. 5, ch. 89-356.

198.04 Tax upon estates of alien decedents.—

A tax is imposed upon the transfer of real property situate and tangible personal property having an actual situs in this state and upon intangible personal property physically present within this state of every person who at the time of death was not a resident of the United States, the amount of which shall be a sum equal to such proportion of the credit allowable under the applicable federal revenue act for estate, inheritance, legacy, and succession taxes actually paid to the several states, as the value of the property taxable in this state bears to the value of the estate taxable by the United States wherever situate. For the purpose of this section, stock in a corporation organized under the laws of this state shall be deemed physically present within this state. The amount receivable as insurance upon the life of a decedent who at the time of death was not a resident of the United States, and any moneys deposited with any person carrying on the banking business by or for such decedent who was not engaged in business in the United States at the time of death, shall not, for the purpose of this section, be deemed to be physically present in this state.

History.—s. 5, ch. 16015, 1933; CGL 1936 Supp. 1342(85); s. 1033, ch. 95-147.

198.05 Administration of law by Department of Revenue.—

The Department of Revenue shall, except as otherwise provided, have jurisdiction and be charged with the administration and enforcement of the provisions of this chapter.

History.—s. 6, ch. 16015, 1933; CGL 1936 Supp. 1342(86); ss. 21, 35, ch. 69-106.

198.06 Examination of books, papers, records, or memoranda by the department.—

(1) The department, for the purpose of ascertaining the correctness of any return, or for the purpose of making a return where none has been made, may examine any books, papers, records, or memoranda, bearing upon the matter required to be included in the return; may require the attendance of persons rendering return or of any officer or employee of such persons, or of any person having knowledge in the premises, at any convenient place in the county in which such person resides, and may take his or her testimony with reference to the matter required by law to be included in such return, and may administer oaths to such persons.

(2) If any person summoned to appear under this chapter to testify, or to produce books, papers, or other data, shall refuse to do so, the circuit court for the county in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

History.—s. 6, ch. 16015, 1933; CGL 1936 Supp. 1342(86); ss. 21, 35, ch. 69-106; s. 1034, ch. 95-147.

198.07 Appointment of agents by department; bonds of agents; may administer oaths; credentials.—

(1) The department may appoint and remove such examiners, appraisers, attorneys and employees as it may deem necessary, such persons to have such duties and powers as the department may from time to time prescribe. The salaries of all examiners, appraisers, attorneys and employees employed by the department shall be such as it may prescribe, and such examiners, appraisers, attorneys and employees shall be reimbursed for travel expenses as provided in s. 112.061.

(2) The department may require such of the examiners, appraisers, attorneys and employees as it may designate to give bond payable to the state for the faithful performance of their duties in such form and with such sureties as it may determine, and all premiums on such bonds shall be paid by the state.

(3) All officers empowered by law to administer oaths and the examiners, appraisers and attorneys appointed by the department may administer an oath to all persons giving any testimony before them or to take the acknowledgment of any person in respect to any return or report required under this chapter.

(4) All examiners, appraisers and attorneys appointed by the department shall have for identification purpose proper credentials issued by the department and exhibit the same upon demand.

History.—s. 6, ch. 16015, 1933; CGL 1936 Supp. 1342(86); s. 19, ch. 63-400; ss. 21, 35, ch. 69-106.

198.08 Rules and regulations.—The department may from time to time make such rules and regulations not inconsistent with this chapter as it may deem necessary to enforce the provisions of this chapter and may adopt such rules and regulations as are or may be promulgated with respect to the estate tax or generation-skipping transfer tax provisions of the Revenue Act of the United States insofar as they shall be applicable hereto. The department may from time to time prescribe such forms as it shall deem proper for the administration of this chapter.

History.—s. 6, ch. 16015, 1933; CGL 1936 Supp. 1342(86); ss. 21, 35, ch. 69-106; s. 4, ch. 80-153.

198.11 Appointment of special appraisers.—The department may employ special appraisers for the purpose of determining the value of any property which is, or is believed by the department to be, subject to the tax imposed by this chapter, and such special appraisers shall be paid such compensation as said department shall deem proper.

History.—s. 6, ch. 16015, 1933; CGL 1936 Supp. 1342(86); ss. 21, 35, ch. 69-106.

198.12 Notice of death to department; tax return.—The personal representative, within 2 months after the decedent's death, or within a like period after qualifying as such, shall give written notice thereof to the department on the form prepared and published by the department known as the "preliminary notice and report."

History.—s. 7, ch. 16015, 1933; CGL 1936 Supp. 1342(87); s. 1, ch. 29718, 1955; ss. 21, 35, ch. 69-106; s. 5, ch. 71-202; s. 6, ch. 80-153.

198.13 Tax return to be made in certain cases.—

(1) The personal representative of every estate required by the laws of the United States to file a federal estate tax return shall file with the department, on or before the last day prescribed by law for filing the initial federal estate tax return for such estate, a return consisting of an executed copy of the federal estate tax return and shall file with such return all supplemental data, if any, as may be necessary to determine and establish the correct tax under this chapter. Such return shall be made in the case of every decedent who at the time of death was not a resident of the United States and whose gross estate includes any real property situate in the state, tangible personal property having an actual situs in the state, and intangible personal property physically present within the state.

(2) Every person required to file a return reporting a generation-skipping transfer under applicable federal statutes and regulations shall file with the Department of Revenue, on or before the last day prescribed for filing the federal return, a return consisting of a duplicate copy of the federal return.

History.—s. 7, ch. 16015, 1933; CGL 1936 Supp. 1342(87); s. 2, ch. 28031, 1953; s. 2, ch. 29718, 1955; ss. 21, 35, ch. 69-106; s. 2, ch. 71-202; s. 7, ch. 80-153; s. 1, ch. 84-325; s. 38, ch. 85-342; s. 1035, ch. 95-147.

198.14 Failure to make return; extension of time for filing.—To obtain an extension for filing a Florida return, the personal representative shall file with the department a copy of the federal extension request within 30 days after filing such request with the federal taxing authorities. If the federal taxing authorities grant an extension of time for filing a return, the department shall allow a like extension of time for filing if the personal representative files a copy of such federal extension with the department within 30 days after receiving an approved federal extension. An extension of time for filing a return shall not operate to extend the time for payment of the tax. If any person fails to file a return at the time prescribed by law or files, willfully or otherwise, a false or fraudulent return, the department shall make the return from its own knowledge and from such information as it can obtain through testimony or otherwise. Any such return so made by the department shall be prima facie good and sufficient for all legal purposes.

History.—s. 7, ch. 16015, 1933; CGL 1936 Supp. 1342(87); s. 3, ch. 29718, 1955; ss. 21, 35, ch. 69-106; s. 2, ch. 87-102.

198.15 When tax due; extension; interest; penalty.

(1) The tax imposed by this chapter is due and payable on or before the last day prescribed by law for paying the federal estate tax pursuant to the initial estate tax return and shall be paid by the personal representative to the department. The department shall extend the time for payment of the tax or any part of the tax if the time for paying the federal estate tax is extended, provided the personal representative files with the department a copy of the approved federal extension notice within 30 days after receiving such notice. No extension shall be for more than 1 year, and the aggregate of extensions with respect to any estate shall not exceed 10 years from the due date. In such case, the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, unless a further extension is granted. If the time for the payment is thus extended, there shall be collected, as part of such amount, interest thereon at the rate of 1 percent per month of the amount due from the due date of the tax to the date the same is paid.

(2) For any tax that is due on or after July 1, 1991, and that is not paid by the due date or by the due date of any extension granted by the department, in addition to any other penalties, a specific penalty shall be added to the tax in the amount of 10 percent of any unpaid tax if the failure is for not more than 30 days, or 20 percent of the aggregate of any unpaid tax if the failure is for more than 30 days.

History.—s. 8, ch. 16015, 1933; CGL 1936 Supp. 1342(88); s. 3, ch. 28031, 1953; ss. 21, 35, ch. 69-106; s. 3, ch. 71-202; s. 1, ch. 76-261; s. 2, ch. 77-411; s. 1, ch. 80-24; s. 8, ch. 80-153; s. 2, ch. 84-325; s. 39, ch. 85-342; s. 3, ch. 87-102; s. 8, ch. 91-112; s. 3, ch. 92-320.

198.155 Payment of tax on generation-skipping transfers.—

(1) The person liable for payment of the federal generation-skipping transfer tax shall be liable for the tax imposed by ss. 198.021 and 198.031.

(2) The tax imposed by ss. 198.021 and 198.031 is due upon a taxable distribution or taxable termination as determined under applicable provisions of the federal generation-skipping transfer tax.

(3) The tax becomes delinquent the day after the last day allowed for filing a return for the generation-skipping transfer.

(4) The tax shall be paid to the Department of Revenue.

(5) If the tax, or any portion thereof, is not paid before it becomes delinquent, it shall bear interest at the rate of 1 percent per month for each month or fraction thereof that it is delinquent.

History.—s. 21, ch. 80-153.

198.16 Notice of determination of deficiency in federal tax to be filed with department.—

(1) It shall be the duty of the personal representative to file with the department within 60 days after a final determination of any deficiency in federal estate tax has been made, written notice thereof.

(2) If, after a duplicate federal return of a generation-skipping transfer has been filed with the Department of Revenue, the federal authorities increase or decrease the amount of the federal generation-skipping

transfer tax, an amended return shall be filed with the department showing all changes made in the original return and the amount of increase or decrease in the federal generation-skipping transfer tax.

(3) If, based upon any deficiency and the ground therefor, it shall appear that the amount of tax previously paid is less than the amount of tax owing, the difference, together with interest at the rate of 1 percent per month from the due date of the tax, shall be paid upon notice and demand by the department. In the event the personal representative or person required to return and pay such tax shall fail to give the notice required by this section, any additional tax which shall be owing may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment at any time prior to the filing of such notice or within 30 days after the delinquent filing of such notice, notwithstanding the provisions of s. 198.28.

History.—s. 9, ch. 16015, 1933; CGL 1936 Supp. 1342(89); s. 4, ch. 28031, 1953; s. 4, ch. 29718, 1955; ss. 21, 35, ch. 69-106; s. 3, ch. 77-411; s. 9, ch. 80-153.

198.17 Deficiency; hearing by department.—

If upon examination of any return a tax or a deficiency in tax is disclosed, the department shall proceed to determine all questions involving such tax or deficiency. Such tax or deficiency in tax shall be assessed and paid together with the penalty and interest, if any, applicable thereto, within 60 days after such demand as may be included in the department's order.

History.—s. 10, ch. 16015, 1933; CGL 1936 Supp. 1342(90); s. 5, ch. 29718, 1955; s. 19, ch. 63-559; ss. 21, 35, ch. 69-106; s. 54, ch. 78-95.

198.18 Failure to pay tax; penalties; delinquent or deficient taxes, interest.—

(1) If any part of a deficiency in tax due under the provisions of this chapter is due to negligence or intentional disregard of the provisions of this chapter or the rules and regulations issued pursuant hereto, with knowledge thereof but without intent to defraud, there shall be added as a penalty 10 percent per month of the total amount of the deficiency in tax to a maximum of 50 percent of the tax due; and, if any part of such deficiency is willfully made with intent to defraud, there shall be added as a penalty 100 percent of the total amount of such deficiency, which penalty shall become due and payable upon notice and demand by the department. The personal representative shall be liable to the state personally and on his or her official bond, if any, for any loss to the state accruing under the provisions of this section through the personal representative's negligence or willful neglect. No interest shall be collected upon the amount of any penalty. The department may settle or compromise such penalties pursuant to s. 213.21.

(2) Any deficiency in tax or any tax payment not received by the department on or before the due date as provided in s. 198.15, in addition to any other penalties, shall bear interest at the rate of 1 percent per month of the amount due from the due date until paid. The department may settle or compromise such interest pursuant to s. 213.21.

History.—s. 11, ch. 16015, 1933; CGL 1936 Supp. 1342(91); s. 6, ch. 29718, 1955; ss. 21, 35, ch. 69-106; s. 2, ch. 76-261; s. 1, ch. 77-174; s. 10, ch. 80-153; s. 2, ch. 81-178; s. 50, ch. 87-6; s. 30, ch. 87-101; s. 4, ch. 92-320; s. 1036, ch. 95-147.

198.19 Receipts for taxes.—The department shall issue to the personal representative, upon payment of the tax imposed by this chapter, receipts in triplicate, any of which shall be sufficient evidence of such payment and shall entitle the personal representative to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his or her accounts. If the personal representative files a complete return and makes written application to the department for determination of the amount of the tax and discharge from personal liability therefor, the department as soon as possible, and in any event within 1 year after receipt of such application, shall notify the personal representative of the amount of the tax; and upon payment thereof the personal representative shall be discharged from personal liability for any additional tax thereafter found to be due and shall be entitled to receive from the department a receipt in writing showing such discharge; however, such discharge shall not operate to release the gross estate of the lien of any additional tax that may thereafter be found to be due, while the title to the gross estate remains in the personal representative or in the heirs, devisees, or distributees thereof; but after such discharge is given, no part of the gross estate shall be subject to such lien or to any claim or demand for any such tax after the title thereto has passed to a bona fide purchaser for value.

History.—s. 12, ch. 16015, 1933; CGL 1936 Supp. 1342(92); ss. 21, 35, ch. 69-106; s. 11, ch. 80-153; s. 1037, ch. 95-147.

198.20 Failure to pay tax when due, department's warrant, etc.—If any tax imposed by this chapter or any portion of such tax be unpaid within 90 days after the same becomes due, and the time for payment be not extended, the department shall issue a warrant directed to the sheriff of any county of the state in which the estate or any part thereof may be situated, commanding the sheriff to levy upon and sell the real and personal property of such estate found within his or her county, for the payment of the amount thereof, with such interest and penalties, if any, as may have accrued thereon or been assessed against the same, together with the cost of executing the warrant, and to return such warrant, to the department and pay to it the money collected by virtue thereof, by a time to be therein specified, not less than 60 days from the date of the warrant. The sheriff thereupon shall proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for services in executing the warrant as are now allowed by law for like services to be collected in the same manner as now provided by law. Alias and pluries warrants may issue from time to time as said department may deem proper until the entire amount of the tax, deficiency, interest, penalties, and costs have been recovered.

History.—s. 13, ch. 16015, 1933; CGL 1936 Supp. 1342(93); ss. 21, 35, ch. 69-106; s. 1038, ch. 95-147.

198.21 Tax due payable from entire estate; third persons.—If the tax or any part thereof is paid or collected out of that part of the estate passing to or in possession of any person other than the personal represent-

ative in his or her capacity as such, such person shall be entitled to a reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the person whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest in the estate is subject to an equal or prior liability for the payment of tax, debts, or other charges against the estate, it being the purpose and intent of this section that, so far as is practical and unless otherwise directed by the will of the decedent, the tax shall be paid out of the estate before its distribution; but the department shall not be charged with enforcing contribution from any person.

History.—s. 14, ch. 16015, 1933; CGL 1936 Supp. 1342(94); ss. 21, 35, ch. 69-106; s. 12, ch. 80-153; s. 1039, ch. 95-147.

198.22 Lien for unpaid taxes.—Unless the tax is sooner paid in full, it shall be a lien for 12 years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien, and except that such part of the gross estate of a resident decedent as is transferred to a bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth shall be divested of such lien and such lien shall then attach to the consideration received for such property from such purchaser, mortgagee, or pledgee. If the department is satisfied that no tax liability exists or that the tax liability of an estate has been fully discharged or provided for, it may issue a waiver releasing any or all property of such estate from the lien herein imposed.

History.—s. 15, ch. 16015, 1933; CGL 1936 Supp. 1342(95); s. 1, ch. 57-108; s. 13, ch. 59-1; ss. 21, 35, ch. 69-106; s. 4, ch. 77-411.

198.23 Personal liability of personal representative.—If any personal representative shall make distribution either in whole or in part of any of the property of an estate to the heirs, next of kin, distributees, legatees, or devisees without having paid or secured the tax due the state under this chapter, or having obtained the release of such property from the lien of such tax, he or she shall become personally liable for the tax so due the state, or so much thereof as may remain due and unpaid, to the full extent of the full value of any property belonging to such person or estate which may come into the personal representative's hands, custody, or control.

History.—s. 16, ch. 16015, 1933; CGL 1936 Supp. 1342(96); s. 13, ch. 80-153; s. 1040, ch. 95-147.

198.24 Sale of real estate by personal representative to pay tax.—Every personal representative shall have the same right and power to take possession of or sell, convey, and dispose of real estate, as assets of the estate, for the payment of the tax imposed by this chapter as he or she may have for the payment of the debts of the decedent.

History.—s. 17, ch. 16015, 1933; CGL 1936 Supp. 1342(97); s. 14, ch. 80-153; s. 1041, ch. 95-147.

198.25 Actions to enforce payment of tax.—Actions may be brought within the time or times herein specified by the department to recover the amount of

any taxes, penalties and interest due under this chapter. Every such action shall be brought in the county where the estate is being or has been administered, or if no administration be had in this state, then in any county where any of the property of the estate shall be situate.

History.—s. 18, ch. 16015, 1933; CGL 1936 Supp. 1342(98); ss. 21, 35, ch. 69-106.

198.26 No discharge of personal representative until tax is paid.—No final account of a personal representative of the estate of a nonresident, nor of the estate of a resident when the value of the gross estate wherever situate exceeds \$60,000 shall be allowed by any court unless and until such account shows, and the judge of said court finds, that the tax imposed by the provisions of this chapter upon the personal representative, which has become payable, has been paid. The certificate of the department of nonliability for the tax or its receipt for the amount of tax therein certified shall be conclusive in such proceedings as to the liability or the payment of the tax to the extent of said certificate.

History.—s. 19, ch. 16015, 1933; CGL 1936 Supp. 1342(99); s. 7, ch. 29718, 1955; ss. 21, 35, ch. 69-106; s. 15, ch. 80-153.

198.28 Time for assessment of tax.—The amount of estate tax due under this chapter shall be determined and assessed within 4 years from the date the return was filed, or within a period expiring 90 days after the last day on which the assessment of a deficiency in federal estate tax may lawfully be made under applicable provisions of the Internal Revenue Laws of the United States, whichever date last occurs, and no suit or other proceedings for the collection of any tax due under this chapter shall be begun after such date; provided, however, that in the case of a false or fraudulent return or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

History.—s. 21, ch. 16015, 1933; CGL 1936 Supp. 1342(101); s. 5, ch. 28031, 1953; s. 8, ch. 29718, 1955.

198.29 Refunds of excess tax paid.—

(1) Whenever it appears, upon the examination of any return made under this chapter or upon proof submitted to the department by the personal representative, that an amount of estate tax has been paid in excess of the tax legally due under this chapter, the amount of such overpayment, together with any overpayment of interest thereon shall be refunded to the personal representative and paid upon the warrant of the Comptroller, drawn upon the Treasurer who shall honor and pay the same; such refund shall be made by the department as a matter of course regardless of whether or not the personal representative has filed a written claim therefor, except that upon request of the department, the personal representative shall file with the department a conformed copy of any written claim for refund of federal estate tax which has theretofore been filed with the United States.

(2) Notwithstanding the foregoing provisions, no refund of estate tax shall be made nor shall any personal representative be entitled to bring any action for refund of estate tax after the expiration of 4 years from the date of payment of the tax to be refunded, unless there shall have been filed with the department written notice of any administrative or judicial determination of the fed-

eral estate tax liability of the estate, whichever shall last occur, and such notice shall have been so filed not later than 60 days after the determination shall have become final.

(3) For the purpose of this section, an administrative determination shall be deemed to have become final on the date of receipt by the personal representative or other interested party of the final payment to be made refunding federal estate tax or upon the last date on which the personal representative or any other interested party shall receive notice from the United States that an overpayment of federal estate tax has been credited by the United States against any liability other than federal estate tax of said estate. A final judicial determination shall be deemed to have occurred on the date on which any judgment entered by a court of competent jurisdiction and determining that there has been an overpayment of federal estate tax becomes final.

(4) Nothing herein contained shall be construed to prevent a personal representative from bringing or maintaining an action in any court of competent jurisdiction, within any period otherwise prescribed by law, to determine any question bearing upon the taxable situs of property, the domicile of a decedent, or otherwise affecting the jurisdiction of the state to impose an inheritance or estate tax with respect to a particular item or items of property.

(5) Notwithstanding any other provision of this section, estate tax may not be refunded pursuant to any allegation that the decedent was a resident of another state unless this state is a party to any compromise agreement between the decedent's estate and the other state or unless this state is allowed to intervene as a party in any action in the other state in which the residency of the decedent is at issue.

History.—s. 22, ch. 16015, 1933; CGL 1936 Supp. 1342(102); s. 8-A, ch. 29718, 1955; ss. 21, 35, ch. 69-106; s. 17, ch. 80-153; s. 2, ch. 89-356.

198.30 Circuit judge to furnish department with names of decedents, etc.—

Each circuit judge of this state shall, on or before the 10th day of every month, notify the department of the names of all decedents; the names and addresses of the respective personal representatives, administrators, or curators appointed; the amount of the bonds, if any, required by the court; and the probable value of the estates, in all estates of decedents whose wills have been probated or propounded for probate before the circuit judge or upon which letters testamentary or upon whose estates letters of administration or curatorship have been sought or granted, during the preceding month; and such report shall contain any other information which the circuit judge may have concerning the estates of such decedents. A circuit judge shall also furnish forthwith such further information, from the records and files of the circuit court in regard to such estates, as the department may from time to time require.

History.—s. 23, ch. 16015, 1933; CGL 1936 Supp. 1342(103); s. 9, ch. 29718, 1955; ss. 21, 35, ch. 69-106; s. 20, ch. 73-334; s. 18, ch. 80-153; s. 1042, ch. 95-147.

198.31 Duties and powers of corporate personal representatives of nonresident decedents.—

If the personal representative of the estate of a nonresident is a corporation duly authorized, qualified, and acting as per-

sonal representative in the jurisdiction of the domicile of the decedent, it shall be under the duties and obligations as to the giving of notices and filing of returns required by this chapter, and may bring and defend actions and suits as may be authorized or permitted by this chapter, to the same extent as an individual personal representative, notwithstanding that such corporation may be prohibited from exercising, in this state, any powers as personal representative; but nothing herein contained shall be taken or construed as authorizing a corporation not authorized to do business in this state to qualify or act as a personal representative, an administrator, or in any other fiduciary capacity, if otherwise prohibited by the laws of this state, except to the extent herein expressly provided.

History.—s. 24, ch. 16015, 1933; CGL 1936 Supp. 1342(104); s. 19, ch. 80-153.

198.32 Prima facie liability for tax.—The estate of each decedent whose property is subject to the laws of the state shall be deemed prima facie liable for estate taxes under this chapter and shall be subject to a lien therefor in such amount as may be later determined to be due and payable on the estate as provided in this chapter. This presumption of liability shall begin on the date of the death of the decedent and shall continue until the full settlement of all taxes which may be found to be due under this chapter, the settlement to be shown by receipts for all taxes due to be issued by the department as provided for in this chapter. Whenever it is made to appear to the department that an estate is not subject to any tax under this chapter, the department shall issue to the personal representative, administrator, or curator, or to the heirs, devisees, or legatees of the decedent, a certificate in writing to that effect, showing such nonliability to tax, which certificate of nonliability shall have the same force and effect as a receipt showing payment. The certificate of nonliability shall be subject to record and admissible in evidence in like manner as receipts showing payment of taxes. A fee of \$5 shall be paid to the department for each certificate so issued.

History.—s. 25, ch. 16015, 1933; CGL 1936 Supp. 1342(105); ss. 21, 35, ch. 69-106; s. 4, ch. 71-202; s. 20, ch. 80-153.

198.33 Discharge of estate, notice of lien, limitation on lien, etc.—

(1) Where no receipt for the payment of taxes, or no receipt of nonliability for taxes has been issued or recorded as provided for in this chapter, the property constituting the estate of the decedent in this state shall be deemed fully acquitted and discharged of all liability for estate and inheritance taxes under this chapter after a lapse of 10 years from the date of the filing with the department of notice of the decedent's death, or after a lapse of 10 years from the date of the filing with the department of an estate tax return, whichever date shall be earlier, unless the department shall make out and file and have recorded in the public records of the county wherein any part of the estate of the decedent may be situated in this state, a notice of lien against the property of the estate, specifying the amount or approximate amount of taxes claimed to be due to the state under this chapter, which notice of lien shall continue said lien in force for an additional period of 5 years or until pay-

ment is made. Such notice of lien shall be filed and recorded in the book of deeds in the office of the clerk of the circuit court; provided, where no receipt for the payment of taxes, or no certificate of nonliability for taxes, has been issued or recorded as provided for in this chapter, the property constituting the estate of the decedent in this state, if said decedent was a resident of this state at the time of death, shall be deemed fully acquitted and discharged of all liability for tax under this chapter after a lapse of 10 years from the date of the death of the decedent, unless the department shall make out and file and have recorded notice of lien as herein provided, which notice shall continue said lien in force against such property of the estate as is situate in the county wherein said notice of lien was recorded for an additional period of 5 years or until payment is made.

(2) Notwithstanding anything to the contrary in this section or this chapter, no lien for estate and inheritance taxes under this chapter shall continue for more than 20 years from the date of death of the decedent, whether the decedent be a resident or nonresident of this state.

History.—s. 26, ch. 16015, 1933; CGL 1936 Supp. 1342(106); s. 6, ch. 28031, 1953; s. 10, ch. 29718, 1955; s. 2, ch. 57-108; ss. 21, 35, ch. 69-106; s. 1043, ch. 95-147.

198.331 Retroactive effect of ss. 198.22 and 198.33.—The provisions of ss. 198.22 and 198.33 as amended by chapter 57-108, Laws of Florida, shall apply to estates of decedents dying after 12:01 a.m., Eastern Standard Time, October 1, 1933.

History.—s. 3, ch. 57-108; ss. 21, 35, ch. 69-106; s. 57, ch. 73-333.

198.34 Disposition of proceeds from taxes.—All taxes and fees levied and collected under this chapter shall be paid into the Treasury of the state to the credit of the General Revenue Fund.

History.—s. 28, ch. 16015, 1933; CGL 1936 Supp. 1342(108); s. 10, ch. 26869, 1951.

198.35 Interpretation and construction.—When not otherwise provided for in this chapter, the rules of interpretation and construction applicable to the estate and inheritance tax laws of the United States shall apply to and be followed in the interpretation of this chapter.

History.—s. 32, ch. 16015, 1933; CGL 1936 Supp. 1342(111); s. 5, ch. 77-411; s. 1, ch. 79-34; s. 1, ch. 80-16; s. 1, ch. 82-38.

198.36 Failure to produce records; penalty.—Whoever fails to comply with any duty imposed upon him or her by this law, or having in his or her possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his or her possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the department or any examiner, appraiser, or attorney appointed pursuant to this chapter, who desires to examine the same in the performance of his or her duties under this chapter, shall be liable to a penalty of not exceeding \$500 to be recovered, with costs of suit, in a civil action in the name of the state.

History.—s. 27, ch. 16015, 1933; CGL 1936 Supp. 1342(107); ss. 21, 35, ch. 69-106; s. 1044, ch. 95-147.

198.37 Failure to make return; penalty.—Any person required under this chapter to pay any tax, or required by law or regulations made under authority

thereof to make a return, keep any records, or supply any information for the purposes of the computation, assessment, or collection of any tax imposed by this chapter, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, is, in addition to other penalties provided by law, guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 27, ch. 16015, 1933; CGL 1936 Supp. 7473(3a); s. 97, ch. 71-136; s. 62, ch. 87-6; s. 36, ch. 87-101; s. 11, ch. 91-224.

198.38 False return; penalty.—Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, this chapter of a false or fraudulent return, affidavit, claim, or document shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim or document) be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 27, ch. 16015, 1933; CGL 1936 Supp. 7473(3a); s. 98, ch. 71-136.

198.39 False statement in return; penalty.—Whoever knowingly makes any false statement in any notice or return required to be filed under this chapter is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 27, ch. 16015, 1933; CGL 1936 Supp. 7473(3a); s. 99, ch. 71-136; s. 63, ch. 87-6; s. 37, ch. 87-101; s. 12, ch. 91-224.

198.40 Failure to pay tax, evasion of tax, etc.; penalty.—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty

of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 27, ch. 16015, 1933; CGL 1936 Supp. 7473(3a); s. 100, ch. 71-136.

198.41 Effectiveness of this chapter, etc.—This chapter shall remain in force and effect so long as the Government of the United States retains in full force and effect as a part of the Revenue Laws of the United States a Federal Estate Tax, and this chapter shall cease to be operative as and when the Government of the United States ceases to impose any Estate Tax of the United States.

History.—s. 29, ch. 16015, 1933; CGL 1936 Supp. 1342(109).

198.42 Short title.—This chapter may be cited as the "Estate Tax Law of Florida."

History.—s. 1, ch. 16015, 1933; CGL 1936 Supp. 1342(80).

198.44 Certain exemptions from inheritance and estate taxes.—The tax imposed under the inheritance and estate tax laws of this state in respect to personal property (except tangible property having an actual situs in this state) shall not be payable:

(1) If the transferor at the time of death was a resident of a state or territory of the United States, or the District of Columbia, which at the time of death did not impose a death tax of any character in respect to property of residents of this state (except tangible personal property having an actual situs in such state, territory, or district); or

(2) If the laws of the state, territory, or district of the residence of the transferor at the time of death contained a reciprocal exemption provision under which nonresidents were exempted from said death taxes of every character in respect to personal property (except tangible personal property having an actual situs therein), and provided that the state, territory, or district of the residence of such nonresident decedent allowed a similar exemption to residents of the state, territory, or district of residence of such decedent.

History.—s. 1, ch. 15747, 1931; CGL 1936 Supp. 1342(70); s. 1045, ch. 95-147.