

UNEDITED

The Succession Duty Act

being

Chapter 38 of *The Revised Statutes of Saskatchewan, 1909*
(effective March 15, 1911).

FOR HISTORICAL REFERENCE ONLY

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

Table of Contents

	SHORT TITLE	
1	Short title	13
2	Application	14
3	Interpretation	15
4	To what Act does not apply	16
5	Property in respect of which estate liable to succession duty	17
6	Executors, etc., to file inventory and bonds	18
7	Appraisement of appraiser	19
8	Valuation by appraiser	20
9	Mode of assessing property liable to duty	21
10	Appeal from appraisement or assessment	22
11	Recovery of duties by action	23
12	Declaration as to liability of property transferred before death	24
		25
		Future estate, etc., when duty may be paid
		Duties to be payable within eighteen months from the death of the owner
		Extension of time for payment of duty
		Administrators, etc., to deduct duty before delivering property
		Power to sell for payment of duty
		Duty to be paid to provincial treasurer
		Refunding duty upon subsequent payment of debts
		Foreign executors, etc., not to transfer stock, etc., until duty paid
		Mode of enforcing payment of duty
		Costs
		Limitations of actions
		Fees of clerks of court
		Lieutenant Governor to make regulations

CHAPTER 38

An Act to provide for the Payment of Succession Duties in Certain Cases

SHORT TITLE

Short title

1 This Act may be cited as “*The Succession Duty Act*.”

1903(2), c.5, s.1; R.S.S. 1909, c.38, s.1.

Application

2 This Act shall apply to the estates of persons dying after the twenty-first day of November, 1903.

1903(2), c.5, s.2; R.S.S. 1909, c.38, s.2.

Interpretation

3 In this Act and any regulations passed thereunder unless the context otherwise requires the expression:

“Property”

1. “**Property**” includes real and personal property of every description and wheresoever situate and every estate or interest therein capable of being devised or bequeathed by will or of passing on the death of the owner to his heirs or personal representatives;

“Aggregate value”

2. “**Aggregate value**” means the value of the property, before any debts or other allowances or exemptions are deducted therefrom and includes property outside of Saskatchewan;

“Dutiable value”

3. “**Dutiable value**” means the value of the property after the debts or other allowances or exemptions authorised by this Act are deducted and in determining the dutiable value of the estate of a deceased the value shall be taken as at the date of the death of the deceased and allowance shall be made for reasonable funeral expenses and for debts and incumbrances which shall be deducted from the value of the property but no allowance shall be made:

(a) For debts incurred by the deceased or incumbrances created by a disposition made by the deceased unless such debts or incumbrances were incurred or created *bona fide* for full consideration in money or money’s worth wholly for the deceased’s own use and benefit and take effect out of his interest; or

(b) For any debt in respect whereof there is a right to reimbursement from any other estate or person unless such reimbursement cannot be obtained; or

(c) More than once for the same debt or incumbrance charged upon different portions of the estate; or

(d) For the expenses of administration except the expenses of procuring letters probate or letters of administration; or

(e) For the expenses of the execution of any trust created by the will of a testator.

1903(2), c.5, s.3; 1908, c.24, ss.1, 2; R.S.S. 1909, c.38, s.3.

To what Act does not apply

4 This Act shall not apply as respects the payment of duty.

1. To any estate the value of which after the allowances authorised by this Act does not exceed five thousand dollars; nor

2. To any estate in respect of property passing by will or intestacy or otherwise to or for the use of the father, mother, husband, wife, child, grandchild, daughter-in-law or son-in-law of the deceased or to any person or persons adopted before the age of twelve years by the deceased as his child or children or to any person to whom deceased for not less than ten years prior to his death stood in the acknowledged relation of parent where the aggregate value of the property of the deceased does not exceed twenty-five thousand dollars.

1903(2), c.5; s.4; 1908, c.24, s.3; R.S.S. 1909, c.38, s.4.

Property in respect of which estate liable to succession duty

5 Save as aforesaid the estate of any person dying after the twenty-first day of November, 1903, who at the time of his death was domiciled in Saskatchewan or who being domiciled elsewhere died leaving property in Saskatchewan shall be subject to a succession duty to be paid for the use of the province and for the purpose of ascertaining the amount of such duty the classes of property hereinafter enumerated shall be deemed be part of the estate of the deceased:

Property in or out of Saskatchewan

(a) All property situate within Saskatchewan and any interest therein or income therefrom whether the deceased person owning or being entitled to such property was at the time of his death domiciled in Saskatchewan or elsewhere and where the deceased at the time of his death was domiciled in Saskatchewan all movable or personal property locally situate without Saskatchewan and any interest therein;

Property voluntarily transferred in contemplation of death

(b) All property situate as aforesaid or any interest therein or income therefrom which shall be voluntarily transferred by transfer made in contemplation of the death of the transferor or intended to take effect in possession or enjoyment after such death to any person in trust or otherwise or by reason of which transfer any person shall become beneficially entitled in possession or expectancy to any property or the income thereof;

Donations *mortis causa* or voluntary dispositions within twelve months of death

(c) Any property taken as *donatio mortis causa* or under a disposition purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust or otherwise which shall not have been *bona fide* made twelve months before the death of deceased including property taken under any gift, whenever made, of which property *bona fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise;

Property transferred by owner to himself jointly with some other person

(d) Any property which a person having been absolutely entitled thereto has caused or may cause to be transferred to or vested in himself and any other person jointly whether by disposition or otherwise so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person including also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone or in concert or by arrangement with any other persons;

Property passing under settlement

(e) Any property passing under any past or future settlement including any trust whether expressed in writing or otherwise, and if contained in a deed or other instrument effecting a settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person made by deed or other instrument not taking effect as a will whereby an interest in such property or the proceeds of sale thereof for life of any other period determinable by reference to death is reserved either expressly or by implication to the settlor or whereby the settlor may have reserved to himself the right by the exercise of any power to restore to himself or to reclaim the absolute interest in such property or the proceeds of sale thereof, or to otherwise resettle the same or any part thereof;

Annuities, etc.

(f) Any annuity or other interest purchased or provided, either by any person alone or in concert or by arrangement with any other person to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased;

Property of which deceased was competent to dispose liable to duty

(g) Any property of which a person was at the time of his death competent to dispose; and a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general or limited power as would if he were *sui juris* enable him to dispose of the property as he thinks fit or to dispose of the same for the benefit of his children or some of them, whether the power is exercisable by instrument *inter vivos* or by will or both including the power exercisable by a tenant in tail whether in possession or not but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or as mortgagee. A disposition taking effect out of the interest of the person so dying shall be deemed to have been made by him whether the concurrence of any other person was or was not required. Money which a person has a general power to charge on property shall be deemed to be property of which he has the power to dispose.

Particular descriptions not to affect general words

(2) The descriptions of properties in clauses (c), (d), (e), (f) and (g) shall not be construed to restrict the generality of the descriptions contained in clauses (a) and (b).

Amount of duty

(3) Where the aggregate value of the property exceeds \$25,000 and any property passes in manner aforesaid either in whole or in part to or for the benefit of the father, mother, husband, wife, child, grandchild, son-in-law, daughter-in-law or adopted child as aforesaid of the deceased the same or so much thereof as passes, as the case may be, shall be subject to a duty at the rate and on the scale as follows:

(a) Where the aggregate value exceeds \$25,000 but does not exceed \$100,000, one and one-half per cent.;

(b) Where the aggregate value exceeds \$100,000 but does not exceed \$200,000, two and one-half per cent.;

(c) Where the aggregate value exceeds \$200,000, five per cent.

(4) Where the aggregate value of the property of the deceased exceeds \$5,000 so much thereof as passes by will, intestacy or otherwise to the grandfather or grandmother or any other lineal ancestor of the deceased except the father or mother or to any brother or sister of the deceased or to any descendant of a brother or sister of the deceased or to a brother or sister of the father or mother of the deceased or to any descendant of such last mentioned brother or sister shall be subject to a duty of \$5 for every \$100 of the value.

(5) Where the aggregate value of the property of the deceased exceeds \$5,000 so much thereof as passes to or for the benefit of any person in any other degree of collateral consanguinity to the deceased than is above described or to or for the benefit of any stranger in blood to the deceased save as hereinbefore provided for shall be subject to a duty of \$10 for every \$100 of the value.

(6) No duty shall however be imposed on any estate in respect of any property which, being all of the property passing to one person, when such person is one of the persons enumerated in clause 2 of section 4, does not exceed \$5,000 and in any other case does not exceed \$200.

(7) If any legacy or succession duty has been paid on any movable or personal property locally situate without Saskatchewan elsewhere than in Saskatchewan no further duty in respect of it shall be imposed beyond the amount, if any, for which the estate would be liable in respect of such property in excess of the amount so paid.

(8) Nothing herein contained shall render any estate liable for duty in respect of any property *bona fide* transferred for a consideration that is of a value substantially equivalent to the property transferred.

1903(2), c.5, s.5; 1908, c.24, s.6; R.S.S. 1909,
c.38, s.5.

Executors, etc., to file inventory and bonds

6 An executor or administrator applying for letters probate or for letters of administration to the estate of a deceased person shall before the issue of letters probate or administration to him make and file with the clerk of the surrogate court in which such application is being made a full, true and correct statement in duplicate, under oath, showing:

(a) A full itemised inventory of all the property of the deceased person including any property not situate in Saskatchewan and the market value thereof; and

(b) The several persons to whom the same will pass under the will or intestacy and the degree of relationship, if any, in which they stand to the deceased; and the executor or administrator shall before the issue of letters probate or letters of administration deliver to the said clerk a bond in a penal sum equal to ten per cent. of the sworn value of the property of the deceased person in respect to which his estate may be liable or may become liable to succession duty executed by himself and two sureties to be approved by the said clerk or a guarantee company to be approved by the attorney general conditioned for the due payment to his Majesty of any duty to which the estate of the deceased coming into the hands of the said executor or administrator may be found liable.

(2) The foregoing subsection shall not apply as respects the provisions requiring security to estates in respect of which no succession duty is payable or administration to which is being applied for by an official administrator.

(3) One duplicate of the said statement shall be forthwith transmitted by the clerk of the said court to the attorney general.

(4) Where property passes on the death of the deceased and no executor or administrator can be made accountable for succession duty in respect of such property every person to whom any property so passes for any beneficial interest in possession and also to the extent of the property actually received or disposed of by him every trustee, guardian, committee or other person in whom any interest in the property so passing or the management thereof is at any time vested and every person in whom the same is vested in possession by alienation or other derivative title shall be accountable for the succession duty in respect of such property and shall within two months after the death of the deceased or such later time as the attorney general shall allow deliver to the clerk of the surrogate court of the judicial district in which said property is situate an account to the best of his knowledge and belief of the property which account shall be verified under oath.

(5) Any executor or administrator who in order to escape payment of succession duty imposed by this Act fails to include any property of the deceased in the inventory required by this section to be filed or distributes any part of the said estate without bringing the same into Saskatchewan shall be personally liable to pay to his Majesty the amount of the duty which would have been payable in respect of the property so omitted or so distributed.

1903(2), c.5, s.6; 1908, c.24, ss.7, 8, 9, 10, 11;
R.S.S. 1909, c.38, s.6.

Appraisement of appraiser

7 In case the attorney general is not satisfied with the value so sworn to or to the correctness of the said inventory he may direct in writing some competent person to make a valuation and appraise the said property and also to appraise any property alleged to have been improperly omitted from the said inventory.

1903(2), c.5, s.7; 1908, c.24, s.12; R.S.S. 1909,
c.38, s.7.

Valuation by appraiser

8 Any appraiser appointed under the provisions of the next preceding section shall forthwith give due and sufficient written notice to the executors or administrators and to such other persons as the attorney general may direct of the time and place at which he will appraise the property included in the inventory or any property which in his opinion should be included therein and shall appraise the same accordingly at its fair market value and make a written report in duplicate of the appraisement together with such other facts in relation thereto as the attorney general may by order require and such report shall forthwith be filed in the office of the clerk of the proper surrogate court and for the purpose of the said inquiry and appraisement the said appraiser shall have all the powers which may be conferred upon commissioners under *An Act respecting Inquiries concerning Public Matters*.

(2) The appraiser shall be entitled to receive the sum of \$5 per day for services performed under this Act and his actual and necessary travelling expenses and the same shall be paid to him by the provincial treasurer.

(3) One duplicate of the said report shall be forthwith transmitted by the clerk of the said court to the attorney general.

1903(2), c.5, s.8; 1908, c.24, ss.13, 14;
R.S.S. 1909, c.38, s.8.

Mode of assessing property liable to duty

9 If the attorney general and the other parties interested do not agree thereon the provincial auditor shall assess and fix the cash value at the date of the death of the deceased of all estates, interests, annuities and life estates.

1903(2), c.5, s.9; 1908, c.24, s.15; R.S.S. 1909,
c.38, s.9.

Appeal from appraisement or assessment

10 The attorney general or any interested person dissatisfied with the appraisement or assessment may appeal therefrom to a judge within thirty days after the making and filing of such assessment and upon such appeal the said judge shall have jurisdiction to determine all questions of valuation and the liability of the appraised estate or any part thereof for such duty and the decision of the said judge shall be final.

1903(2), c.5, s.10; 1908, c.24, s.16; R.S.S. 1909,
c.38, s.10.

Recovery of duties by action

11 Any sum payable under this Act shall be recoverable with costs of suit as a duty due to his Majesty from any person liable therefor by action in any court of competent jurisdiction in any judicial district and it shall not in any case be necessary to take the proceedings authorised by the preceding sections.

Matters determinable by court

(2) The said court shall have jurisdiction to determine what property is liable to duty under this Act, the amount thereof and the time or times when the same is payable and may itself or through any referee exercise any of the powers which by sections 7 to 10 are conferred upon any officer or person.

Action before time for payment of duty

(3) An action may be brought to determine any question of liability under this Act notwithstanding that the time for the payment of the duty has not arrived and such action shall be considered as an ordinary action in the said court.

Appeal

(4) An appeal shall lie to the supreme court *en banc* in any such action wherever an appeal would lie if the action were between subject and subject.

1903 (2), c.5, ss.11, 12, 13, 14; R.S.S. 1909, c.38,
s.11.

Declaration as to liability of property transferred before death

12 Where any person's estate is declared liable to duty in respect of any property which has previous to the death of such person been conveyed or transferred to some other person the court may declare the duty to be a lien upon such property and may make such declaration although the amount of such duty has not been ascertained and where any property in respect of which the estate would have been liable to duty had such property remained in the hands of the person to whom or for whose benefit it was conveyed or transferred by such deceased person has been conveyed or transferred to any purchaser for valuable consideration the court may direct the person to whom or for whose benefit the said property was conveyed or transferred by such deceased person as aforesaid to pay the amount of the duty to which the estate would have been subject in respect of such property.

1903(2), c.5, s.15; R.S.S. 1909, c.38, s.12.

Future estate, etc., when duty may be paid

13 Where the property real or personal in respect of which duty is payable includes any future or contingent estate, income or interest the duty in respect of such estate, income or interest may be paid within the time limited by subsection (1) of section 14 and where so paid the duty shall be on the value of such estate, income or interest as at the death of the deceased. By consent of the attorney general in writing duty may be paid after the time so limited and before such estate, income or interest comes into possession; but in the event of such consent the duty shall then be on a value not less in any event than the value of such estate, income or interest as at the date when the duty is paid; and no deduction shall be made for duty paid or payable in respect of any prior estate, income or interest. The duty in respect of any future or contingent estate, income or interest if not sooner paid shall be payable forthwith when such estate, income or interest comes into possession in which case the duty shall be on the value computed under section 9 as at the date of such coming into possession; and no deduction shall be made for duty paid or payable in respect of any prior estate, income or interest.

Duty paid before estate comes into possession

(2) Where the duty in respect of any future or contingent estate, income or interest has been paid by the executor, administrator or trustee before such estate, income or interest comes into possession the duty so paid shall be charged on such future or contingent estate, income or interest and shall be repaid with interest at the rate of five per cent. per annum to the executor, administrator or trustee, as the case may be, by the person who is to become entitled to such future or contingent estate, income or interest and if not sooner repaid shall then be repaid at the time when such estate, income or interest comes into possession.

When no person is entitled to the present enjoyment of a future or contingent estate

(3) Where in respect of any future or contingent estate or interest there is no person beneficially entitled to the present income or enjoyment or where there is some part thereof to which there is no person so entitled the duty in respect of such future or contingent estate or interest, or part thereof, as the case may be, shall be payable as in sections 13 and 14 provided.

Commuting duties on future estate or interests

(4) Notwithstanding the duty may under this section not be payable until the time when the right of possession or actual enjoyment accrues any executor, administrator, guardian or trustee, or person owning a prior interest when such executor, administrator, guardian or trustee or person has the custody or control of the property may agree upon or commute for a present payment out of the property in discharge of the said duty; and the attorney general may upon the application of any such person commute the succession duty which would or might but for the commutation become payable in respect of such interest for a certain sum to be presently paid and for determining that sum shall cause a present value to be set upon such duty regard being had to the contingencies affecting the liability to and rate and amount of such duty and interest and on the receipt of such sum the provincial treasurer on the recommendation of the attorney general shall give a certificate of discharge from such duty.

1903(2), c.5, s.16; 1908, c.24, ss.17, 18; R.S.S.
1909, c.38, s.13.

Duties to be payable within eighteen months from the death of the owner

14 The duties imposed by this Act unless otherwise herein provided shall be due and payable at the death of the deceased or within eighteen months thereafter and if the same are paid within eighteen months no interest shall be charged or collected thereon but if not so paid interest at the rate of five per centum per annum from the death of the deceased shall be charged and collected and such duties together with the interest thereon shall be and remain a lien upon the property in respect to which they are payable until the same are paid:

Proviso

Provided that no duty is payable on the estate or that the duty chargeable upon any legacy given by way of annuity whether for life or otherwise shall be paid by four equal payments the first of which payments of duty shall be made before or on completing payment of the first year's annuity and the three others of such payments of duty shall be made in like manner successively before or on completing the respective payments of the three succeeding years' annuity respectively. In case the annuitant dies before the expiration of the said four years only payment of instalments which fall due before his death shall be required;

Extension of time for payment

Provided further that the Lieutenant Governor in Council upon its being proved to his satisfaction that payment of the duty within the time limited by this subsection would be unduly onerous on the estate may by order so extend the time for the payment of the said duty as shall appear just and reasonable; and the duty shall be due and payable as in the said order set forth.

Certificate of discharge to be given by provincial treasurer

(2) The provincial treasurer on being satisfied that no duty is payable on the estate or that the full amount of succession duty has been or will be paid in respect of an estate or any part thereof shall if required by the person accounting for the duty give a certificate to that effect which shall discharge from any further claim for succession duty the property shown by the certificate to form the estate or such part thereof, as the case may be.

Certificate not a discharge in case of fraud, etc.

(3) Such certificate shall not discharge any person or property other than a *bona fide* purchaser for valuable consideration without notice from succession duty in case of fraud or failure to disclose material facts and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death and the duty in respect of such property shall be at such rate as would be payable if the value thereof were added to the value of the property in respect of which duty has been already accounted for:

Provided the said treasurer may in his discretion decline to grant such certificate until the expiration of one year from the death of the deceased testator or intestate, as the case may be.

1903(2), c.5, s.17; 1908, c.24, s.19; R.S.S. 1909, c.38, s.14.

Extension of time for payment of duty

15 Upon the application of any person liable for the payment of any duty under this Act on notice to the attorney general the judge of the proper surrogate court may make an order extending the time fixed by law for payment thereof where it appears to such judge that payment within the time prescribed by this Act is impossible owing to some cause over which the person liable has no control.

1903(2), c.5, s.18; 1908, c.24, s.20; R.S.S. 1909, c.38, s.15.

Administrators, etc., to deduct duty before delivering property

16 Any administrator, executor or trustee having in charge or trust any estate, legacy or property in respect of which duty is payable under this Act shall deduct the duty therefrom or collect the duty thereon upon the appraised value thereof from the person entitled to such property and he shall not deliver any property subject to duty to any person until he has collected the duty thereon.

1903 (2), c.5, s.19; R.S.S. 1909, c.38, s.16.

Power to sell for payment of duty

17 Executors, administrators and trustees shall have power to sell so much of the property of the deceased as will enable them to pay the duty in the same manner as they may by law do for the payment of debts of the testator or intestate.

1903(2), c.5, s.20; R.S.S. 1909, c.38, s.17.

Duty to be paid to provincial treasurer

18 Every sum of money retained by an executor, administrator or trustee or paid into his hands for the duty on any property shall be paid by him forthwith to the provincial treasurer or as he may direct.

1903(2), c.5, s.21; R.S.S. 1909, c.38, s.18.

Refunding duty upon subsequent payment of debts

19 Where any debts shall be proved against the estate of deceased person after the payment of legacies or distribution of property from which the duty has been deducted or upon which it has been paid and a refund is made by the legatee, devisee, heir or next of kin a proportion of the duty so paid shall be repaid to him by the executor, administrator or trustee of the said duty has not been paid to the provincial treasurer or by the provincial treasurer if it has been so paid.

1903(2), c.5, s.22; 1908, c.24, s.21; R.S.S. 1909, c.38, s.19.

Foreign executors, etc., not to transfer stock, etc., until duty paid

20 No foreign executor or administrator shall assign or transfer any stock or shares in Saskatchewan standing in the name of a deceased person or in trust for him which are liable to pay succession duty until such duty is paid as herein provided or security given as required by section 6 of this Act and any corporation allowing a transfer of any stocks or shares contrary to this section shall be liable to pay the duty payable in respect thereof.

1903(2), c.5, s.23; 1908, c.24, s.23; R.S.S. 1909, c.38, s.20.

Mode of enforcing payment of duty

21 If it is made to appear on affidavit to a judge that any duty accruing under this Act has not been paid according to law he may make an order by way of originating summons directing the persons interested in the property liable to the duty to appear before the court on a day certain to be therein named and show cause why said duty shall not be paid.

(2) The service of such order and the time, manner and proof thereof and fees therefor and the hearing and determining thereon and the enforcement of the judgment of the court thereon shall be according to the practice in or upon the enforcement of a judgment of the supreme court.

1903(2) c.5, s.24; R.S.S. 1909, c.38, s.21.

Costs

22 The costs of all proceedings under this Act in any court shall be in the discretion of the court or of a judge thereof.

1903(2), c.5, s.23; R.S.S. 1909, c.38, s.22.

Limitations of actions

23 Any action, matter or proceeding by or against the province in respect of duties or claims arising upon or out of any succession shall be commenced within six years from the time when such duties or claims became payable.

1903(2), c.5, s.26; R.S.S. 1909, c.38, s.23.

Fees of clerks of court

24 The officials of the courts shall be entitled to take for the performance of duties and services under this Act fees similar to those payable to them under the rules of the court in which the proceedings are taken.

1903(2), c.5, s.27; 1908, c.24, s.23; R.S.S. 1909, c.38, s.24.

Lieutenant Governor to make regulations

25 The Lieutenant Governor in Council may make regulations for carrying into effect the provisions of this Act and to cover cases not herein provided for which shall be published forthwith in *The Saskatchewan Gazette*.

1903(2), c.5, s.28; R.S.S. 1909, c.38, s.25.