

fifth of one per cent. on the balance of the estate, and said tax shall be due and payable whether the executor waives his commissions or not, it being hereby intended that no commissions less than this tax shall be allowed by the Orphans' Courts of this State, and that no waiver of commissions or devise or legacy as compensation or in lieu of commissions shall defeat the payment of this tax.

A register of wills is not entitled to retain as extra compensation over and above his salary and expenses of his office, commissions on amount of taxes on commissions of executors and administrators collected by him. *Banks v. State*, 60 Md. 308.

Under this and the following section orphans' court must fix commissions not only in cases where executor claims them but in all cases (not covered by art. 93, sec. 8), whether executor claims them or not, and it is on commissions as thus fixed, that tax is imposed. History of this and following section. This section construed in connection with art. 93, sec. 5—see notes thereto. *In re Estate of Watts*, 108 Md. 698; *Beachley v. Estate of Ballinger*, 119 Md. 157.

A testator made a bequest in favor of his executor in lieu of commissions, which was more than commissions would have amounted to; executor was appointed administrator *pendente lite* and part of property passed through his hands as such, and part through his hands as executor, but he did only what he would have been required to do as executor. Held that this and two following sections did not authorize allowance of commissions. The question whether these sections do or do not require imposition of tax upon a legacy given in lieu of commissions, not considered. *Renshaw v. Williams*, 75 Md. 509.

Where money of an estate is paid to a foreign executor before letters are granted in Maryland, Maryland executor is not entitled to commissions on such money; hence, there is no tax on commissions. *Citizens' Bank v. Sharp*, 53 Md. 531.

The act of 1860, ch. 163, repealed and re-enacted sec. 107 of the code of 1860 so as to exempt from tax an executor who renounced his commissions. Held that such an executor was relieved from tax where account was stated after enactment of act of 1860, although letters were granted and inventory filed prior thereto. *Owings v. State*, 22 Md. 118. And see *Williams v. Mosher*, 6 Galt, 454.

As to commissions of executors and administrators, see art. 93, sec. 5, and notes.

The tax on commissions is payable on each successive administration. *Williams v. State*, 144 Md. 19.

The tax on commissions should be computed upon the value of securities as shown in reappraisal, as the executor's commissions under art. 93, sec. 5, are allowed on the amount of the estate. *Downes v. Safe Dep. & Trust Co.*, 164 Md. 300.

The tax on commissions imposed by this section and sec. 106 is not an "estate, inheritance, legacy or succession tax" within the meaning of art. 62A. *Cross v. Downes*, 164 Md. 217.

1935, ch. 289.

**105.** Whenever an administrator *ad colligendum* is appointed by any Orphans' Court of this State, all commissions allowed him by the Orphans' Courts of this State shall be subject to a tax for the benefit of the State of an amount equal to three-tenths (3/10) of one per cent. on the first Twenty Thousand Dollars (\$20,000) of the estate, and one-fifteenth (1/15) of one per cent. on the balance of the estate, and any executor or administrator thereafter appointed for such estate shall pay the tax prescribed in the previous section of this Article, but shall be allowed a credit thereon for any tax on commissions actually theretofore paid by any administrator *ad colligendum*.

Cited in *Goldsborough v. DeWitt*, 171 Md. 231.

An. Code, 1924, sec. 120. 1912, sec. 116. 1904, sec. 113. 1888, sec. 98. 1860, ch. 163. 1862, ch. 18. 1874, ch. 483, sec. 99. 1929, ch. 226, sec. 102.

**106.** The several orphans' courts shall fix the commissions of executors within twelve months from the grant of administration, and in all subsequent accounts wherein executors shall charge themselves with further assets, and they shall fix such commissions in all cases, in which letters of administration have been or may hereafter be granted, whether commissions are claimed by the executors or not; and all commissions so fixed