

CHAPTER 72.

INHERITANCE TAX ACT.

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72.01 **Subjects liable.** A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed, or any interest therein, or income therefrom in trust or otherwise, to any person, association or corporation, in the following cases, except as hereinafter provided:

(1) **WHILE A RESIDENT OF STATE.** When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state.

(2) **NONRESIDENT'S PROPERTY WITHIN THE STATE.** When a transfer is by will or intestate law, of property within the state or within its jurisdiction and the decedent was a nonresident of the state at the time of his death.

(3) **TRANSFERS IN CONTEMPLATION OF DEATH OR TO TAKE EFFECT AFTER DEATH.** (a) When the transfer is of property, made by a resident or by a nonresident when such nonresident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor. Every transfer by deed, grant, bargain, sale or gift, made within 2 years prior to the death of the grantor, vendor or donor, of a material part of his estate, or in the nature of a final disposition or distribution thereof, and without an adequate and full consideration in money or money's worth, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this section.

(b) When a transfer is of property, made without an adequate and full consideration in money or money's worth by a resident or by a nonresident when such nonresident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift, intended to take effect in possession or enjoyment at or after the death of the grantor, vendor or donor, including any transfer where the transferor has retained for his life or for any period not ending before his death: 1 the possession or enjoyment of, or the right to the income, or to economic benefit from, the property, or 2 the right, either alone or in conjunction with any person, to alter, amend, revoke or terminate such transfer, or to designate the beneficiary who shall possess or enjoy the property, or the income, or economic benefit therefrom.

(4) **TRANSFER BEFORE OR AFTER PASSAGE OF ACT.** Such tax shall be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof, by any such transfer whether made before or after April 1, 1903; provided, that property or estates which have vested in such persons or corporation before said date shall not be subject to a tax; and provided further, that

contingent interests created by the will of any person who died prior to said date shall not be taxed.

(5) **TRANSFER UNDER POWER OF APPOINTMENT.** Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property, made either before or after April 1, 1903, such appointment, when made, shall be deemed a transfer taxable under ss. 72.01 to 72.24 in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under ss. 72.01 to 72.24 shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure. For the purpose of this section, the term "power of appointment" means any power to appoint exercisable by any person either alone or in conjunction with any other person, except a power to appoint within a class which excludes the donee of the power and is restricted to the husband, wife, lineal issue, the wife or widow of a son and the husband of a daughter of the creator of the power; provided, that such power was created on or after October 21, 1942, or if created prior to October 21, 1942, was subsequently modified or limited by release or otherwise to the type of restricted power described herein; and provided that, with respect to any transfer made or taking effect on or after July 22, 1951, this exception shall not include any power to appoint, to the extent of any property with respect to which such power to appoint is validly exercised by creating another power to appoint. As used in this subsection the term "lineal issue" includes an adopted child and a mutually acknowledged child as defined in s. 72.02 (1).

(6) **JOINT INTERESTS.** Whenever any property, real or personal, is held in the joint names of two or more persons, or as tenants by the entirety, or is deposited in banks or other institutions or depositories in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons the right of the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer of one-half or other proper fraction thereof taxable under the provisions of this chapter in the same manner as though the property to which such transfer relates belonged to the tenants by the entirety, joint tenants or joint depositories as tenants in common, and had been bequeathed or devised to the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, by such deceased tenant by the entirety, joint tenant or joint depositor, by will.

(7) **INSURANCE PART OF ESTATE.** (a) Insurance payable upon the death of any person in which any of the legal incidents of ownership remain in said person at the time of his death, except insurance returnable for income taxation, shall be deemed a part of his estate for the purpose of the tax, and shall be taxable to the person or persons entitled thereto, irrespective of the source of the premium payments. "Legal incidents of ownership" in a policy of insurance as used herein mean the right of the insured or his estate to its economic benefits, the power to change the beneficiary, to surrender or cancel the policy, to assign it, to revoke an assignment, to pledge it for a loan, or to obtain from the insurer a loan against the surrender value of the policy.

(b) Insurance otherwise taxable under paragraph (a) of this subsection, to the clear value of ten thousand dollars payable to a beneficiary or beneficiaries other than the estate of the insured, shall not constitute a part of his estate for the purpose of the tax and shall be exempt from taxation. This exemption shall be in addition to all other exemptions and allowances, and each beneficiary of such insurance, other than the estate of the insured, shall be entitled to a portion of the total exemption based upon the ratio that the value of the insurance payable to him bears to the value of the total insurance payable to all such beneficiaries.

(8) **BASIS OF TAX.** The tax so imposed shall be upon the clear market value of such property at the rates hereinafter prescribed and only upon the excess of the exemptions hereinafter granted. Inheritance and estate taxes imposed by the government of the United States on property which is subject to the state inheritance tax, to the extent said federal taxes are computed on the value of the property for state inheritance tax purposes, shall be deemed debts and shall be deducted in determining the value of the property transferred.

(9) **RECIPROCITY AS TO NONRESIDENT DECEDENTS.** Personal property of a nonresident decedent made taxable under this chapter, except tangible personal property having an

actual situs in this state, shall not be subject to the tax so imposed if a like exemption was allowed at the time of death of such decedent by the laws of the state, territory or district of the decedent's residence in favor of residents of this state, provided, that this section shall not apply unless a tax is imposed on the transfer of said property by the laws of the state, territory or district of residence.

History: 1951 c. 510; 1953 c. 61, 499; 1957 c. 144.

A "like" exemption under (9) is allowed if the state of the decedent's residence would exempt as to a Wisconsin resident in identical converse circumstances, although the statute defining the exemption may not be in the same form as the Wisconsin reciprocity statute and there may be some points of difference between them. A tax is "imposed" if the bequest is subject to taxation in the state of residence, although it may be absolved from payment because it qualifies under some exemption. A transfer to a trustee of shares of stock owned by a Kentucky resident in a Wisconsin corporation is exempt from the Wisconsin tax, where Kentucky makes such a transfer subject to taxation, but exempts it in this case because the bequest goes to charity, and Kentucky would exempt from the Kentucky tax a devolution of shares of stock owned by a Wisconsin resident in a Kentucky corporation under the circumstances of this case. Estate of Robbins, 258 W 206, 45 NW (2d) 678.

The reciprocity provision in (9) applies so as to exempt from the Wisconsin tax a transfer of shares of stock owned by a resident of the District of Columbia in a Wisconsin corporation, where the transfer is to a charitable trust for a use not confined to "within" the District of Columbia and therefore a tax is imposed under its laws on such transfer, and its laws, although not containing a reciprocity-exemption provision, do not impose any tax on transfers of intangible personal property of nonresident decedents not employed by them in carrying on business in the district. Estate of Stewart, 258 W 211, 45 NW (2d) 687, 47 NW (2d) 742.

Under (6), all that is needed to set the statute in motion and impose the tax is to have property in the joint names of the parties, and in such case testimony offered by a surviving husband, that the property was paid for with his money and was in fact his property although acquired and held in the name of himself and his wife, is immaterial. Estate of Atkinson, 261 W 481, 53 NW (2d) 185.

An inheritance tax is not a tax on property or property rights, but is an excise tax levied on the transfer or transaction, and the amount of the property involved is used merely as a measure of the amount of the tax. Estate of Atkinson, 261 W 481, 53 NW (2d) 185.

Where the testator's brother, to whom the testator left his entire estate, acquired certain corporate stock therein as a legatee under the will and not by contract, the value of his legacy was not affected by the terms of a contract whereby the testator had agreed to sell the stock to the brother at a stipulated price and, in such situation, the clear market value of the stock for the purpose of the inheritance tax was properly determined without giving any consideration to the price stipulated in such contract. Estate of Michel, 262 W 432, 55 NW (2d) 388.

A bonus payment by an employer to the estate of a deceased employe, not made pursuant to contract, is not a transfer subject to inheritance tax. Estate of Stevens, 266 W 331, 63 NW (2d) 732.

Under (8), the deduction for federal estate taxes paid is not to be computed on an apportionment basis measured by the ratio

of the gross estate for Wisconsin tax purposes to the gross estate for federal tax purposes, but is to be computed by taking the amount of the Wisconsin taxable estate subject to federal estate taxes, computing the federal estate taxes on that amount, and allowing the result as the amount deductible in the computation of the state inheritance taxes. Estate of Stevens, 266 W 331, 63 NW (2d) 732.

Tests for determining value of stock in a close or family corporation discussed. Failure to consider effect of restrictive stock sale agreement held not prejudicial where no evidence of effect of agreement is presented. Determination of value cannot be based on liquidating value of stock where owner cannot force corporate liquidation. Estate of Gooding, 269 W 496, 69 NW (2d) 586.

The "clear market value" is the sum which the property would bring on a fair sale when sold by a willing seller not obliged to sell to a willing buyer not obliged to buy. Estate of Gooding, 269 W 496, 69 NW (2d) 586.

(3) (b) was drawn from a New York law and had already been construed by courts of that state. Wisconsin will construe the statute as New York did, and will also follow later decisions based on the earlier cases. The present worth of an annuity payable to the widow of an employe under the U. S. Civil Service Retirement Act is not subject to Wisconsin inheritance tax under (3) (b) or (7). Estate of Sweet, 270 W 256, 70 NW (2d) 645.

Proceeds of a life policy payable to the insured's widow as beneficiary, and left by her on deposit with the insurance company, were part of the widow's estate for purposes of determining the inheritance tax due from her estate, and did not represent insurance exempt from taxation in her estate by virtue of (7). Will of Fehlhaber, 272 W 327, 75 NW (2d) 444.

Notes and bonds delivered by a decedent to her son without consideration, to be divided on her death between the son and his sister, were subject to inheritance tax by virtue of (3) (b), as transfers by gift intended to take effect at the death of the donor. Will of Fehlhaber, 272 W 327, 75 NW (2d) 444.

Stock sold by an executor to an heir, pursuant to an old contract made years before testator's death, at a figure much below actual market value at time of transfer was subject to inheritance tax under (3) (b) and (8) on the basis of full value at the date of transfer. Estate of Banta, 273 W 328, 77 NW (2d) 730.

In its reference in (3) (b) to a transfer made "without an adequate and full consideration in money or money's worth," the legislature intended the sufficiency of the consideration to be determined as of the time set for the transfer of the property in possession and enjoyment, that is, the date of death of the grantor. Under the present Wisconsin inheritance-tax statutes, parties may not bind the state to their own stipulation of value of property, other than an adequate and full consideration at the time of transfer, when such property is intended to come into possession and enjoyment by the transferee at or after the death of the grantor, vendor, or donor. Estate of Banta, 273 W 328, 77 NW (2d) 730.

72.02 Primary rates, where not in excess of twenty-five thousand dollars. When the property or any beneficial interest therein passes by any such transfer, where the amount of the property shall exceed in value the exemption specified in section 72.04, and shall not exceed in value twenty-five thousand dollars, the tax hereby imposed shall be:

(1) **TWO PER CENTUM, WHERE.** Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal issue, lineal ancestor, brother or sister, or a descendant of a brother or sister of the decedent, a wife or widow of a son, or

the husband of a daughter of the decedent, or any child legally adopted, or any child to whom such decedent for not less than 10 years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said 10 years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of 2 per centum of the clear value of such interest in such property. The terms lineal issue, lineal ancestor, brother, sister, descendant, son and daughter shall include such relationship established through such legal adoption.

(3) **SIX PER CENTUM, WHERE.** Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother or a descendant of a brother or sister of the father or mother of the decedent, at the rate of six per centum of the clear value of such interest in such property.

(4) **EIGHT PER CENTUM, WHERE.** Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of eight per centum of the clear value of such interest in such property.

72.03 Other rates, where in excess of twenty-five thousand dollars. The foregoing rates in section 72.02 are for convenience termed the primary rates. When the amount of the clear value of such property or interest exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(1) **RATE WHERE AMOUNT TWENTY-FIVE THOUSAND DOLLARS TO FIFTY THOUSAND DOLLARS.** Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars two times the primary rates.

(2) **RATE WHERE AMOUNT FIFTY THOUSAND DOLLARS TO ONE HUNDRED THOUSAND DOLLARS.** Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars three times the primary rates.

(3) **RATE WHERE AMOUNT ONE HUNDRED THOUSAND DOLLARS TO FIVE HUNDRED THOUSAND DOLLARS.** Upon all in excess of one hundred thousand dollars and up to five hundred thousand dollars four times the primary rates.

(4) **RATE WHERE AMOUNT OVER FIVE HUNDRED THOUSAND DOLLARS.** Upon all in excess of \$500,000 five times the primary rates.

72.035 Rate limit. The tax imposed by section 72.02 and section 72.03 shall not exceed 15 per cent of the property transferred to any beneficiary.

72.04 Exemptions; reciprocity in exemptions. The following exemptions from the tax are hereby allowed:

(1) All property transferred to municipal corporations within the state for strictly county, town or municipal purposes, or to corporations or voluntary associations organized under the laws of this state, solely for religious, humane, charitable or educational purposes, and to any national organization of veterans of the armed forces of the United States or subordinate unit thereof, which shall use the property so transferred exclusively for the purposes of their organization, within the state, and all property transferred to banks or trust companies of this state, or to individuals residing in this state, as trustees, in trust exclusively for public, religious, humane, charitable, educational or municipal purposes in this state, and all property transferred to the American National Red Cross or any chapter thereof, shall be exempt; provided, that the requirement of use or purposes in this state shall be deemed satisfied as to all property so transferred which is used or permanently set aside for use exclusively within this state by such corporations, organizations or trustees at any time before the tax which would otherwise be payable on the transfer of such property has been finally and conclusively fixed and determined. Such exemption shall extend to all such property before May 15, 1953, transferred on which the tax has not been finally and conclusively fixed and determined.

(2) All property transferred to any corporation, organization, association or foundation of this state, in trust, and for the direct financial benefit of any town, city, school district, village or county of this state.

(3) The exemptions granted in the foregoing subsections (1) and (2) and those granted in the introductory paragraph of s. 72.01 shall extend to transfers to or for the use of corporations, municipal or private, associations, foundations or trustees located in, and those organized or established under the laws of, any other state, commonwealth, territory or district, exclusively for public, municipal, religious, humane, charitable or educational purposes, including institutions maintained by the state, commonwealth, territory or district itself, if the law of such other state, commonwealth, territory or district on the date of death of the decedent granted a like and equal exemption to similar

transfers from decedents resident therein to municipal or private corporations, associations, foundations or trustees, as the case may be, located in or organized or established under the laws of Wisconsin, exclusively for such purposes, including institutions maintained by the state of Wisconsin itself.

(4) No tax shall be imposed upon any tangible personal property of a resident decedent when such property is located without this state, and when the transfer of such property is subject to an inheritance or transfer tax in the state where located and which tax has actually been paid, provided such property is not without this state temporarily nor for the sole purpose of deposit or safe-keeping.

(6) No tax shall be imposed under this chapter upon the benefits payable to, or other right and interest of any member, beneficiary or distributee of any estate under ss. 23.14, 38.24 to 38.27, 62.13 (9) to (10) or 66.90 to 66.918.

History: 1951 c. 483; 1953 c. 131, 499, 631; 1955 c. 589.

Where a testator made a bequest to a Wisconsin charitable corporation and the will was silent as to where the bequest should be used and the articles of the corporation gave its directors discretion to use its funds either within or without this state, or both, but the directors adopted a resolution that all property received from the testator should be permanently and irrevocably set aside for use exclusively within this state—the bequest was exempt from inheritance tax under (1). (*Estate of Jensen*, 263 W 274, distinguished.) *State v. Fulton Foundation*, 273 W 599, 79 NW (2d) 230.

A bequest by a Wisconsin resident to the American Cancer Society, a New York charitable corporation, national in scope and authorized to carry on its work in other states as well as in New York, which bequest is to be used in research, is exempted from Wisconsin inheritance tax by (3). Once it is established that the legatee or-

ganization is the creature of a reciprocal state, it is the character of the organization as charitable and the character of the use of the funds as charitable that qualify the transfer as one to which the exemption under (3) applies. *Estate of Schwarten*, 274 W 146, 79 NW (2d) 836.

A bequest to the "Trustees of the Grand Lodge of Free and Accepted Masons of Wisconsin," a Wisconsin corporation, organized in part for fraternal and in part for charitable purposes, to be used for the maintenance of charitable institutions owned and operated by such corporation, is construed under the language of the will as being a bequest to the corporation itself, and hence such bequest is not exempted from inheritance tax by (1), as a transfer of property to a Wisconsin corporation organized "solely" for charitable purposes, nor as a transfer to individuals, as trustees, in trust. *Estate of Silverthorn*, 274 W 453, 80 NW (2d) 430.

72.045 Exemptions from first \$25,000. The following exemptions from the tax, to be taken out of the first \$25,000, are allowed:

(1) Property of a clear value of \$15,000 transferred to the widow of the decedent, \$5,000 transferred to the husband of the decedent, \$2,000 transferred to each of the other persons described in s. 72.02 (1), except a brother or sister or a descendant of a brother or sister of the decedent, and \$500 transferred to a brother or sister or a descendant of a brother or sister of the decedent shall be exempt. Any child of the decedent shall be entitled to credit for so much of the tax paid by the surviving spouse as applied to any of the same property which hereafter shall be transferred by or from such surviving spouse to such child, provided the surviving spouse does not survive said decedent to exceed 6 years, and provided, further, that where other property is also transferred by or from the surviving spouse to any such child, then such credit shall be applied only upon that portion of the total tax assessed against such child as is attributable to the property transferred upon which a tax was paid by the surviving spouse, such portion to be ascertained by the ratio that the property transferred upon which a tax was paid by the surviving spouse bears to the total amount of property transferred.

(2) Property of the clear value of \$250 transferred to each of the persons described in s. 72.02 (3) shall be exempt.

(3) Property of the clear value of \$100 transferred to each of the persons described in s. 72.02 (4) shall be exempt.

(4) Bequests not to exceed \$500 for the care and maintenance of the burial lot of the deceased and bequests not to exceed \$500 to the cemetery in which the said deceased is buried, and bequests not to exceed \$1,000 for the performance of a religious purpose or religious service for or in behalf of the deceased or for or in behalf of any person named in his will, shall be exempt from any inheritance tax.

(5) Whenever part of an estate is within and part without the state, there shall be deducted for tax purposes only a proportion of the debts, expenses of burial and of administration, equal to the proportion which the property within the state bears to the entire estate, and any beneficiary shall be entitled only to a proportion of his Wisconsin exemption equal to the proportion which his interest in the property within the state bears to his entire interest in such estate.

History: 1953 c. 499, 584.

Bequests for Masses for the testatrix, her husband, and deceased relatives were bequests for the performance of "a religious purpose or religious service for or in behalf of" the individual persons designated, within 72.04 (7), and thereunder were exempted from inheritance taxes only to the extent

of \$1,000, as against a contention that such bequests were wholly exempt under 72.01, exempting bequests to religious corporations for religious and charitable purposes. *Estate of Miller*, 261 W 534, 53 NW (2d) 172. In (1) the words "which shall use the property so transferred exclusively for the

purposes of their organization, within the state," refer back to "corporations of this state," as well as to the next-preceding "organization of veterans." If the articles of incorporation of a Wisconsin religious corporation provide for corporate purposes that can be carried out only within the state, this is sufficient to sustain the exemption from inheritance tax of an outright bequest to such religious corporation. Estate of Jussen, 263 W 274, 57 NW (2d) 343.

Under the provision in (1) exempting all property transferred to trustees, in trust exclusively for religious, etc., purposes in this state, it is the purpose of the bequest, rather than the corporation to which payment of the trust bequest is to be made, which determines such exemption. A bequest to a Wisconsin religious corporation organized to promote and aid "home and foreign missions" which bequest was to be paid to such religious corporation by a bank-trustee on the death of the life beneficiaries of the trust, was not exempt from inheritance tax as a trust bequest "exclusively for . . . religious . . . purposes in this state," and a resolution adopted by the board of directors of such religious corporation confining the use of the proceeds of the bequest to Wisconsin was not effective to bring about such exemption. Whether a trust bequest is exempt from inheritance tax is to be determined as of the instant of death of the decedent, and not by any subsequent action taken by the beneficiary. The exemption from inheritance tax under (1)

is not defeated if a decedent makes a trust bequest, otherwise exempt from tax, subject to a condition dependent on occurrence after death. Estate of Jussen, 263 W 274, 57 NW (2d) 343.

The use which a religious corporation is to make of a bequest is necessarily controlled by the intention of the decedent if such intention is manifest. Where a bequest to a certain Wisconsin religious society expressly stated that it was to be used throughout the Milwaukee, Wisconsin, archdiocese, but a bequest to a Wisconsin religious corporation organized to promote and aid "home and foreign missions" did not specify where it was to be used, the testatrix must be presumed to have known that a large part of the funds of such religious corporation was devoted to missions outside of Wisconsin, and her failure to restrict the use of such bequest within the limits of Wisconsin is deemed indicative of a desire to have it used in the general work of such religious corporation for outside as well as Wisconsin missions, so that a resolution adopted by the board of directors of such religious corporation restricting the use of it to Wisconsin was invalid as contrary to the testatrix's intent, and was ineffective to bring it within the provision in (1), exempting from inheritance tax all property transferred to religious corporations of this state, "which shall use the property so transferred exclusively for the purposes of their organization, within the state." Estate of Jussen, 263 W 274, 57 NW (2d) 343.

72.05 Lien. (1) **PERSONAL LIABILITY.** All taxes imposed by ss. 72.01 to 72.24 shall be due and payable at the time of decedent's death, except as hereinafter provided; and every such tax shall be and remain a lien upon the property transferred until paid, and the person to whom the property is transferred and the administrators, executors and trustees of every estate so transferred shall be personally liable for such tax until its payment. Whenever the department of taxation is satisfied that the collection of the tax will not thereby be jeopardized, it shall have the power to release the lien hereby imposed with respect to all or any part of the property transferred upon the advance payment of a fee of \$2. The release of the lien of the tax, duly executed by the department of taxation, may be recorded in the office of the register of deeds of the county in which the property described therein is situated; and the register of deeds will be entitled to the same fee as is provided for the recording of the satisfaction of a mortgage.

(2) **PAYMENT; RECEIPT.** The tax shall be paid to the treasurer of the county in which the county court is situated having jurisdiction as herein provided; and said treasurer shall make triplicate receipts of such payment, one of which he shall immediately send to the department of taxation, and one receipt shall be delivered to the executor, administrator, or trustee, whereupon it shall be a proper voucher in the settlement of his accounts, and the remaining receipt he shall retain.

(3) **BOND OR RECEIPT NECESSARY.** But no executor, administrator or trustee shall be entitled to a final accounting of an estate, in settlement of which a tax is due under the provisions of sections 72.01 to 72.24, inclusive, unless he shall produce such receipts or a certified copy thereof or unless a bond shall have been filed as prescribed by section 72.09.

History: 1953 c. 61; 1957 c. 460.

72.06 Discount; interest. If such tax is paid within one year from the accruing thereof, a discount of 5 per cent shall be allowed and deducted therefrom. If such tax is not paid within 18 months from the accruing thereof, interest shall be charged and collected thereon at the rate of 10 per cent per annum from the time the tax accrued; unless by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax shall not be determined and paid as herein provided, in which case interest at the rate of 6 per cent per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which 10 per cent shall be charged. In all cases when a bond shall be given under the provisions of section 72.09, interest shall be charged at the rate of 6 per cent from the accrual of the tax, until the date of payment thereof. In computing time under this section, the day of death shall be excluded.

Discount provision in 72.06 is not applicable to the state estate tax imposed by 72.50 to 72.61, or to the 30 per cent emergency inheritance tax measured thereby imposed by

72.74. It is applicable to normal inheritance taxes imposed by 72.01 to 72.24 and to the emergency inheritance tax imposed by 72.74 measured thereby. 40 Atty. Gen. 86.

72.07 Executors; powers; collection; payment. Every executor, administrator, or trustee shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such administrator, executor, or trustee having in charge or in trust any legacy or property for distribution, subject to such tax, shall deduct the tax therefrom; and within thirty days therefrom shall pay over the same to the county treasurer, as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof, from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under ss. 72.01 to 72.24, to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the administrator, executor, or trustee, and the tax shall remain a lien or charge on such real property until paid, and the payment thereof shall be enforced by the executor, administrator, or trustee in the same manner that payment of the legacy might be enforced, or by the district attorney under s. 72.16. If any such legacy shall be given in money to any such person for a limited period, the administrator, executor, or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him to make an apportionment if the case require it, of the sum to be paid into the hands by such legatees, and for such further order relative thereto as the case may require.

History: 1953 c. 61.

72.08 Refunding. (1) **DEBTS PROVED AFTER PAYMENT.** If any debt shall be proved against the estate of the decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted, or upon which it has been paid by the person entitled to such legacy or distributive share and such person is required by the order of the county court having jurisdiction thereof on notice to the department of taxation to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to such person by the executor, administrator, trustee, or officer to whom said tax has been paid.

(2) **ERRONEOUSLY PAID.** When any amount of said tax shall have been paid erroneously into the state treasury and a transcript from the county court record showing the facts shall have been filed with the department of taxation, it shall be lawful for the state treasurer, upon proper certification by the department of taxation, to refund the amount of such erroneous or illegal payment to the executor, administrator, trustee, person, or persons who have paid any such tax in error, from the treasury; or the department of taxation may order, direct, and allow the treasurer of any county to refund the amount of any illegal or erroneous payment of such tax out of the funds in his hands or custody to the credit of such taxes, and credit him with the same in his quarterly account rendered to the department of taxation under this chapter. Provided, however, that all applications for such refunding of erroneous taxes shall be made within one year from the payment thereof, or within one year after the reversal or modification of the order fixing such tax.

(3) **ADVANCE PAYMENT AND REFUND OF EXCESS.** Any person from whom any such tax is or may be due may make an estimate of and pay the same to the county treasurer at any time before the same is determined by the court, and shall thereupon be entitled to any discount and be relieved from any interest or penalty upon the amount so paid in the same manner as if the tax were then determined. The county treasurer shall receipt therefor and shall file copies thereof in like manner as provided in section 72.05 (2). Any excess so paid shall be refunded to the person so paying or entitled thereto by such treasurer out of any inheritance tax money in his possession, upon filing with such treasurer a copy of the order fixing such tax, with a certificate of the judge attached thereto stating the amount of the refund due, or by the state treasurer when the county treasurer is without such money, upon proper certification by the department of taxation.

72.09 Bond for payment of legacies not in possession. Any beneficiary of any property chargeable with a tax under sections 72.01 to 72.24, inclusive, and any executors, administrators and trustees thereof, may elect, within eighteen months from the date of the transfer thereof, as herein provided, not to pay such tax until the person or persons beneficially interested therein shall come into the actual possession or enjoyment thereof. The person or persons so electing shall give a bond to the state in a penalty of three times the amount of any such tax, with such sureties as the county court of the proper county may approve, conditioned for the payment of such tax and interest thereon, at such time or period as the person or persons beneficially interested therein may come into the actual possession or enjoyment of such property, which bond shall be filed in the county court. Such bond must be executed and filed, and a full return of such prop-

erty upon oath made to the county court within one year from the date of such transfer thereof, as herein provided, and such bond must be renewed every five years.

72.10 Requests to executors for services. If a testator bequeaths property to one or more executors or trustees in lieu of their commissions or allowances, or makes them his legatees to an amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed, above the amount of commissions or allowances prescribed by law in similar cases, shall be taxable by ss. 72.01 to 72.24. This section shall not be construed as authorizing the deduction of trustees' fees to be incurred in the administration of a testamentary trust. Such trustees' fees shall not be deductible in determining the net taxable estate.

History: 1957 c. 185.

72.11 Securities of decedents. (1) **BY FOREIGN EXECUTOR, ADMINISTRATOR OR TRUSTEE.** If a foreign executor, administrator, or trustee shall assign or transfer any stock or obligations in this state, standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county or the state treasurer on the transfer thereof.

(2) **BY BANKS AND TRUST COMPANIES.** No safe deposit company, bank, or other institution, person or persons, holding securities or assets of a nonresident decedent, nor any foreign or domestic corporation doing business within this state in which a nonresident decedent held stock at his decease, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended transfer be served upon the department of taxation and public administrator at least 10 days prior to the said transfer; nor shall any such safe deposit company, bank, or other institution, person or persons, nor any such foreign or domestic corporation, deliver or transfer any securities or assets of the estate of a nonresident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such securities or assets under the provisions of the inheritance tax laws, without an order from the proper court authorizing such transfer; and it shall be lawful for the department of taxation or public administrator, personally or by representative, to examine said securities or assets at any time before such delivery or transfer. Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax as herein provided shall render said safe deposit company, trust company, bank, or other institution, person or persons, or such foreign or domestic corporation, liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of the inheritance tax laws. The department of taxation may issue a certificate authorizing the transfer of any such stock, securities or assets upon the advance payment of \$1 whenever it appears to the satisfaction of the department that no tax is due thereon.

(3) **RESIDENTS.** No safe deposit company, trust company, bank, corporation or other institution, person or persons having in possession or control securities, deposits or other assets, belonging to or standing in the joint names of a resident decedent and one or more other persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, bank, corporation or other institution, making the delivery or transfer herein provided, shall deliver or transfer the same to the survivor or survivors, nor to the executors, administrators or legal representative of such decedent, nor to any person or persons whomsoever, unless notice of the time and place of such intended delivery or transfer be served upon the department of taxation and public administrator at least 10 days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, bank, corporation or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the joint names of a resident decedent and one or more other persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, bank, corporation or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed under the inheritance tax laws on account of the delivery or transfer of such securities, deposits or other assets, including the shares of capital stock of, or other interests in, the safe deposit company, trust company, bank, corporation or other institution making the delivery or transfer, under this section, unless the department of taxation consents thereto in writing. And it is lawful for the department of taxation or public administrator, personally or by representative to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax and interest as herein provided, shall render said safe deposit company, trust company, bank, corpo-

ration or other institution, person or persons liable to the payment of the amount of tax and interest due upon said securities, deposits or other assets, including the shares of capital stock of, or other interest in, the safe deposit company, trust company, bank, corporation or other institution making the delivery or transfer. The department of taxation may issue a certificate authorizing the delivery or transfer of any such stock, securities, deposits or other assets upon the advance payment of \$1 for each certificate, whenever it appears to the satisfaction of the department that no tax is due thereon or that the collection of the tax will not thereby be jeopardized. This subsection shall not be applicable to bank accounts or property belonging to or standing in the name of a partnership.

(8) EVIDENCE OF VALUE OF SECURITIES. Whenever any decedent shall have left any stocks, bonds or other securities issued by any corporation, joint stock company, partnership, or association, domestic or foreign, owning property or doing business in this state, or any interest therein, or in the assets thereof, all inventories, books, papers, income tax returns and records thereof shall be competent evidence in any court, and shall be accessible to the executor or administrator of the estate of such decedent, the appraisers, public administrator, inheritance tax counsel, or other person designated by the court, for the purpose of ascertaining the true value of such stocks, bonds, securities or other interests, under such conditions and limitations as the court may prescribe; and the court may order the production in court of any such inventories, books, papers and records, and may require the attendance and examination in court of any officer or employe of any such corporations, joint stock company, partnership or association.

History: 1953 c. 251; 1957 c. 460.

72.12 County courts. (1) JURISDICTION; RESIDENTS. The county court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under the inheritance tax laws, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of the inheritance tax laws and to do any act in relation thereto authorized by law to be done by a county court in other matters or proceedings coming within its jurisdiction; and if 2 or more county courts shall be entitled to exercise any such jurisdiction, the county court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other county court.

(2) PETITION FOR ANCILLARY LETTERS. Every petition for ancillary letters testamentary or of administration shall include the public administrator as a person to be notified, and a true and correct statement of all the decedent's property in this state with the value thereof; upon presentation thereof, the county court shall cause the order for hearing to be served personally upon the public administrator; and upon the hearing, the county court shall determine the amount of the inheritance tax which may be or become due, and the decree awarding the letters may contain provisions for the payment of such tax or the giving of security therefor.

(3) JURISDICTION; NONRESIDENTS. The county court of Dane county and the judge thereof shall have jurisdiction to hear and determine all questions relating to the determination and adjustment of inheritance taxes in the estates of nonresident decedents in which a tax appears to be due, and in which it does not otherwise appear necessary for regular administration to be had therein; provided that in all cases in which a nonresident dies possessed of real or tangible personal property located within this state, the county court, and the judge thereof, of the county in which such property is located shall have concurrent jurisdiction with said Dane county court. And in such estates the public administrator may be appointed as special administrator for the purposes of such adjustment. The county treasurer shall retain for the use of the county out of all such taxes paid and accounted for, only one per cent, and the balance, less the statutory expenses of collection and adjustment as fixed by the court, shall be paid into the state treasury; provided, however, that the minimum fee to which the county shall be entitled shall be \$3 in each case and that in no case shall the maximum fee exceed \$100; and the judge shall be paid \$2 for each such case.

See note to 72.15, citing Estate of Kirsh, 269 W 32, 68 NW (2d) 455.

72.13 Special appraiser; appointment; transfers. The county court, upon the application of any interested party, including the department of taxation and public administrator, or upon its own motion, shall as often as, and whenever occasion may require, appoint a competent person as special appraiser to fix the fair market value at the time of the transfer thereof of the property of persons whose estate shall be subject to the payment of any tax imposed by sections 72.01 to 72.24, inclusive.

72.14 Appraiser; duties; powers; compensation. Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property

to be appraised, including the public administrator, and to such persons as the county court may by order direct, of the time and place when he will appraise such property. He shall, at such time and place, appraise the same at its fair market value, as herein prescribed, and for that purpose, the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing, to the said county court, together with the depositions of the witnesses examined, and such other facts in relation thereto and to the said matter as the said county court may order or require. Every appraiser shall be paid on the certificate of the county court at the rate of \$7.50 per day for every day actually and necessarily employed in such appraisal, and his actual and necessary traveling expenses and the fees paid such witnesses, which fees shall be the same as those now paid to witnesses subpoenaed to attend in courts of record, by the county treasurer out of any funds he may have in his hands on account of any tax imposed under the provisions of sections 72.01 to 72.24.

72.15 Hearing and determination of tax. (1) **SPECIAL APPRAISER.** The report of the special appraiser shall be made in duplicate, and not less than 20 days before the hearing thereon one of said duplicates shall be filed in the office of the county court and the other shall be mailed to the department of taxation. At the time and place of hearing the administration account the county court shall examine such report, and from the report and other proofs relating to any such estate shall forthwith determine the cash value of such estate and the amount of tax to which the same is liable; or, the county court without appointing such appraiser may at the time so fixed hear evidence and determine the cash value of such estate and the amount of tax to which the same is liable.

(2) **NOTICE OF HEARING.** (a) Notice of hearing to determine the inheritance tax shall be given in the same manner and may be included in the notice of hearing the administration account as provided in s. 317.11, and the hearing to determine the tax shall be held at the same time and place as the hearing provided in said section or at such other time as the court may order. Notice in writing of the hearing shall be mailed to the public administrator and to the department of taxation not less than 20 days before the hearing upon such blanks and containing such information as the department may provide or require. The 20-day notice may be waived at the discretion of the department of taxation upon advance payment of \$1.

(b) In all cases in which the court has made, prior to January 1, 1947, a determination that no tax was due or that the tax has been determined and paid, such determination shall be deemed conclusive in respect to the property which was before the court regardless of whether notice of hearing to determine the tax was given the public administrator and department of taxation as herein required.

(3) **ADDITIONAL APPRAISER; COMPENSATION.** If the county court without appointing such special appraiser decide to hear evidence as to the cash value of the estate for inheritance tax purposes, the court may, at the time of the appointment of the regular appraisers of the estate, or at any time thereafter, on its own motion, or on motion of the public administrator, designate an additional third appraiser to represent the county and state, and such additional appraiser shall report the inventory and appraisal of said property with the other appraisers; or, in case of failure to agree, in a separate report, and be entitled for such appraisal to an amount to be fixed by the county court in its discretion, which amount shall be paid on the certificate of the county judge by the county treasurer out of any of the state's inheritance tax funds he may have in his possession.

(4) **FUTURE ESTATES, ETC.; COMPUTATION BY INSURANCE COMMISSIONER.** The commissioner of insurance shall, on application of any county court or of the department of taxation, determine the value of any such future or contingent estates, income, or interests therein, limited, contingent, dependent, or determinable upon the life or lives of the person or persons in being upon the facts contained in such special appraiser's report or upon the facts contained in the county court's finding and determination and certify the same to the county court, and his certificate shall be presumptive evidence that the method of computation adopted therein is correct.

(5) **BASIS FOR APPRAISAL OF FUTURE ESTATES.** Whenever a transfer of property is made upon which there is, or in any contingency there may be, a tax imposed, such property shall be appraised at its clear market value immediately upon the transfer or as soon thereafter as practicable. The value of every future or limited estate, income, interest or annuity dependent upon any life or lives in being, shall be determined by the rule, method and standard of mortality and rate of interest employed by the commissioner of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies, except that for

every future or limited estate, income, interest or annuity the value of which is not based upon an assumed rate of interest the rate of interest for making such computation shall be five per cent per annum. The tax so determined shall be construed to be upon the transfer of a proportion of the principal or corpus of the estate equal to the present value of such future or limited estate, income, interest or annuity, and not upon any earnings or income of said property produced after death, and such earnings or income shall not be exempt from the income tax. Such tax shall be due and payable forthwith out of the property transferred.

(6) **INCUMBRANCES; RETURN OF TAX.** In estimating the value of any estate or interest in property to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made in respect of any contingent incumbrance thereon, nor in respect of any contingency upon the happening of which the estate or property or some part thereof, or interest therein, might be abridged, defeated or diminished; provided, however, that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgement, defeat, or diminution of such estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax in respect of the amount or value of the incumbrance when taking effect or so much as will reduce the same to the amount which would have been assessed in respect of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided in section 72.08.

(7) **TAXATION ON RELIEF OF ESTATE CHARGED WITH LIFE INTEREST.** Where any property shall, after April 1, 1903, be transferred subject to any charge, estate, or interest determinable by the death of any person or at any period ascertainable only by reference to death, the increase of benefit accruing to any person or corporation upon the extinction or determination of such charge, estate or interest shall be deemed a transfer of property taxable under the provisions of ss. 72.01 to 72.24, inclusive, in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase of benefit from the person from whom the title to their respective estates or interests is derived.

(8) **ESTATES IN TRUST.** When property is transferred in trust or otherwise, and the rights, interests or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon such transfer at the lowest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of sections 72.01 to 72.24, inclusive, and such tax so imposed shall be due and payable forthwith out of the property transferred; provided, however, that on the happening of any contingency or condition whereby the said property or any part thereof is transferred to a person or corporation, which under the provisions of sections 72.01 to 72.24, inclusive, is required to pay a tax at a higher rate than the tax imposed, then such transferee shall pay the difference between the tax imposed and the tax at the higher rate, and the amount of such increased tax shall be enforced and collected as provided in sections 72.01 to 72.24, inclusive; provided further, that if on the happening of any such contingency or condition the said property or any part thereof is transferred to persons or corporations, which under the provisions of sections 72.01 to 72.24, inclusive, would be required to pay less tax on the transfer than has been paid, a return shall be made to the person or persons entitled thereto of so much of the tax as will reduce the same to the amount which would have been assessed originally on such transfer, had the date of the happening of such condition or contingency and the persons ultimately receiving such property been known when the original assessment was made. Such return of tax shall be made in the manner provided in section 72.08.

(8m) **TAX ON POWER.** A transfer of an estate for life or for years or of a beneficial interest in property accompanied by a power of appointment as defined in section 72.01 (5) over the remainder shall be taxed to the life or term tenant or transferee of the beneficial interest as the transfer of absolute ownership, provided, however, that where the power is excluded from the definition of a power of appointment as defined in section 72.01 (5) then the remainder interest subject to the power shall be taxed in the estate of the donor of the power as if the power had been exercised in favor of the person in the restricted class in such a manner as will result in the imposition of the largest amount of tax. Upon the exercise or release of such power by the donee of the power, either upon his death or during his lifetime, the tax in the estate of the donor of the power shall be redetermined to accord with the ultimate devolution of the property. Any excess tax determined to have been paid shall, upon application to the department of taxation, be refunded forthwith and without interest to the residual beneficiaries of the estate of the donor of the power, or to their respective heirs and assigns.

(9) **CONTINGENT ESTATES.** Estates in expectancy which are contingent or defeasible, and in which proceedings for determination of the tax have not been taken, or where the taxation thereof has been held in abeyance, shall be appraised at their full undiminished clear value when the person entitled thereto shall come into the beneficial enjoyment or possession thereof without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation upon which said estates in expectancy may have been limited. Where an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting.

(10) **ORDER OF COUNTY COURT DETERMINING VALUE OF ESTATES AND LIABILITY TO TAX.** Upon the determination by the county court of the value of any estate which is taxable under the inheritance tax laws, and of the tax to which it is liable, an order shall be entered by the court determining the same, which order shall include a statement of (a) the date of death of the decedent, (b) the gross value of the real and personal property of such estate, stating the principal items thereof, (c) the deductions therefrom allowed by the court, (d) the names and relationship of the persons entitled to receive the same with the amount received by each, (e) the rates and amounts of inheritance tax for which each such person is liable, and the total amount of tax to be paid, (f) a statement of the amount of interest or penalty due, if any. Such order shall be in the form prescribed by the department of taxation. A copy of the same shall be delivered or mailed to the county treasurer, and the department of taxation, and no final judgment shall be entered in such estates until due proof is filed with the court that such copies have been so delivered or mailed.

(11) **REHEARING IN COUNTY COURT.** The attorney-general, department of taxation, public administrator, district attorney, or any person dissatisfied with the appraisal or assessment and determination of such tax may apply for a rehearing thereof before the county court within 60 days from the fixing, assessing, and determination of the tax by the county court as herein provided on filing a written notice which shall state the grounds of the application for a rehearing. The rehearing shall be upon the records, proceedings, and proofs had and taken on the hearings as herein provided and a new trial shall not be had or granted unless specially ordered by the county court.

(12) **REAPPRAISAL IN CIRCUIT COURT.** Within 2 years after the entry of an order or decree of the county court, determining the value of an estate and assessing the tax thereon, the attorney-general may, if he believes that such appraisal, assessment or determination has been fraudulently, collusively or erroneously made, make application to the circuit judge of the judicial circuit in which the former owner of such estate resided, for a reappraisal thereof. The circuit judge to whom such application is made may thereupon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers, be subject to the duties, shall give the notice and receive the compensation provided by sections 72.13 and 72.14. Such compensation shall be payable by the county treasurer out of any funds he may have on account of any tax imposed under the provisions of sections 72.01 to 72.24, inclusive, upon the certificate of the circuit judge. The report of such appraiser shall be filed in the circuit court, and thereafter the same proceedings shall be taken and had by and before such circuit court as herein provided to be taken and had by and before the county court. The determination and assessment of such circuit court shall supersede the determination and assessment of the county court, and shall be filed with the department of taxation and a certified copy transmitted to the county court of the proper county.

History: 1951 c. 326, 510; 1953 c. 251.

Under 72.15 (11) the county court has no jurisdiction to rehear a determination of inheritance taxes after the lapse of 60 days, in respect to *intervivos* gifts not included in the inventory and not considered as to tax status. Neither 72.12 (1) nor 324.05 apply in this case. Under 72.15 (12) the attorney general may have a review in circuit court by applying therefor in 2 years. Where assets are first discovered after an estate is closed, good title would not pass without probate and payment of tax, and the state could apply for the reopening of the estate, but the limitations in 72.15 (11) or (12) apply to after-discovered *inter vivos* gifts. Estate of Kirsh, 269 W 32, 68 NW (2d) 455. Where an order of 1924 determining inheritance taxes did not determine any taxes on the remainder interests but expressly provided that the taxes as to the unknown

beneficiaries be postponed for future consideration, the provisions of (9) applied, so that the tax on the remainder interests should be based on full value as of the date of the death of the life beneficiary, and not on the value as of the date of the death of the testatrix. (9) affects only the appraised values of the various contingent remainders, and it does not alter the rates and exemptions which apply to them and which remain those in effect at the death of the testatrix. Estate of Latimer, 271 W 1, 72 NW (2d) 321.

A postponed assessment under (9) levied on value as of the time when the estate comes into enjoyment, rather than as of the date of the death of the testatrix, is not an unconstitutional discrimination between estates. Estate of Latimer, 271 W 1, 72 NW (2d) 321.

72.16 Unpaid taxes; proceedings to collect. (1) If the treasurer of any county, the public administrator, or the department of taxation, shall have reason to believe that

any tax is due and unpaid under sections 72.01 to 72.24, inclusive, after the refusal or neglect of any person liable therefor to pay the same, he shall notify the district attorney of the county in writing of such failure or neglect, and such district attorney, if he have probable cause to believe that such tax is due and unpaid, shall apply to the county court for a citation citing the person liable to pay such tax to appear before the court on the day specified, not more than 3 months from the date of such citation, and show cause why the tax should not be paid; or such citation may be granted on the application of the public administrator or the department of taxation. The judge of the county court upon such application and whenever it shall appear to him that any such tax, accruing under sections 72.01 to 72.24, inclusive, has not been paid as required by law, shall issue such citation, and the service of such citation and the time, manner and proof thereof, and the hearing and determination thereof, shall conform as near as may be to the provisions of the laws governing probate practice of this state, and whenever it shall appear that any such tax is due and payable, and the payment thereof cannot be enforced under the provisions of sections 72.01 to 72.24, inclusive, in said county court, the person or corporation from whom the same is due is hereby made liable to the county of the county court having jurisdiction over such estate or property for the amount of such tax, and it shall be the duty of the district attorney of said county, in the name of such county, to sue for and enforce the collection of such tax, and it is made the duty of said district attorney to appear for and act on behalf of any county treasurer, who shall be cited to appear before any county court under the provisions of sections 72.01 to 72.24, inclusive.

(2) In addition to the methods of collection provided in subsection (1), the department of taxation may proceed under section 71.13 (3) to make collection of delinquent inheritance taxes.

72.17 Special administration. (1) **PUBLIC ADMINISTRATOR.** If no application for administration of the estate of any deceased person is made within 60 days after his death, and such estate appears to come under the provisions of the inheritance tax laws, or when administration has been completed without determining the tax, or when no tax is due, and that fact has not been found by the court, or when any certificate of survivorship or of heirship has been applied for or issued under section 230.47 or 237.09, or when a certificate of assignment is applied for under section 310.075, the public administrator of the proper county, or any person interested in such estate, may make application for such special or general administration as may be necessary for the purpose of the adjustment and payment of such tax, if any, or if no tax is due, for an order determining that fact. In cases arising under this and the following subsection, the public administrator, if appointed such special administrator, shall be entitled in the discretion of the court to the fees allowed by law to administrators, or to other reasonable compensation. In cases arising under this and the following subsection, the public administrator shall notify, by registered mail, the transferees of such estates in which it appears probable that a tax is due on any of such transfers and has not been determined. If proceedings to determine the tax are not instituted by such transferees within 60 days from the receipt of the registered notice of the public administrator, the public administrator shall institute such proceedings, and the costs and expenses of such special administration shall be paid by the estate in those cases in which a tax is found due; when no tax is found due, the costs and expenses of such special administration shall be paid by the county treasurer out of the inheritance tax funds in his hands, upon the certificate of the county judge.

(2) **TRANSFER IN CONTEMPLATION OF DEATH.** Where it appears that the estate of a deceased person subject to the inheritance tax laws was transferred in contemplation of the death of the grantor without the adjustment and payment of the inheritance taxes and no application for such adjustment is made within sixty days after the demise of such grantor, the public administrator of the proper county shall make application for and shall be entitled to such general or special administration as may be necessary for the purpose of the adjustment and payment of the inheritance taxes provided by law and shall administer such estate the same as other estates are administered as though such estate had not been transferred by the grantor.

(3) **DUTIES; FEES.** It shall be the duty of the public administrator, under the general supervision of the department of taxation and with the assistance of the district attorney, when required by the department of taxation or county judge, to investigate the estates of deceased persons within his county and to appear for and act in behalf of the county and state in the county court in such estates as the court may in its discretion deem necessary, and for such services the public administrator shall be entitled to 5 per centum of the gross inheritance tax as determined in each such estate, to be paid by the county treasurer out of the inheritance tax funds upon an order of the county judge, provided that the minimum fee for each such estate shall not be less than \$3, except that it shall not exceed the amount of such tax, and the maximum fee not more than \$25, but in cases

of unusual difficulty, where the tax exceeds \$500, the county judge may allow the public administrator such additional compensation as he may deem just and reasonable. When the public administrator is not available, or is not qualified to act as such in any case, the court may call upon the district attorney or any attorney to act as public administrator in such case, and such acting public administrator shall be entitled to the fees above provided. Before the county judge shall sign an order for the payment of fees to such public administrator, such public administrator shall render a report to the county judge setting forth the names of estates in which he appeared in court for and in behalf of the county and state, the amount of tax determined in each estate, and the fees to which such public administrator was entitled under this section. The county judge shall attach said report to his order allowing fees of the public administrator. The public administrator shall make such report quarterly.

(4) COUNTIES OVER TWO HUNDRED THOUSAND, PUBLIC ADMINISTRATOR. In counties containing a population of over two hundred thousand, an assistant district attorney, compensated as otherwise provided by law, may by order of the county court be designated to take the place of and perform all the duties of the public administrator relating to the inheritance tax laws, except as provided in subsections (1) and (2). Whenever the assistant district attorney is designated as public administrator he shall receive the same fees as the public administrator in other counties, provided, however, that all such fees collected by him as public administrator shall be turned into the county treasurer.

History: 1951 c. 594.

72.175 Determination of inheritance tax lien on real estate. Any person, corporation or association owning any real estate, or having any interest therein, or lien thereon, may file a petition with the county court of the county where such real estate or any part thereof is situated for a determination of the inheritance tax, if any, which is or may be a lien upon such real estate or part thereof. Upon the filing of such petition, notice of hearing shall be given to the department of taxation and to the public administrator as provided in section 72.15. The court shall determine the tax, if any, and order the same paid. Upon payment of such tax, and the filing of the receipt with the court, or if the court finds that no tax is due, the court shall issue a certificate that such lands, described in the certificate, are free of said lien for inheritance tax. Such certificate shall, subject to the right of appeal, be conclusive and the lands therein described shall be forever free and clear of said lien and may be recorded in the office of the register of deeds, who will be entitled to the same fee as is provided for the recording of the satisfaction of a mortgage.

72.176 Petitions for certificates of descent. In any proceeding in the county court upon a petition for a certificate of descent or for a certificate terminating a joint tenancy or for a certificate terminating a life estate such petition shall include a request for determination of the inheritance tax payable on such transfer. In every such case the court, without appointment of an administrator or special administrator, after notice to the public administrator and department of taxation as herein provided, shall hear evidence relative to the property in question and determine the market value thereof and the amount of the tax due or to become due on the transfer of same under sections 72.01 to 72.24. Such determination may be made with or without appraisal in the discretion of the court, except that when reasonable request is made therefor by the petitioner or other interested party, including the department of taxation and public administrator, the court shall cause an appraisal to be made by 2 disinterested persons appointed by the court in the manner that estates of decedents are appraised. Notice in writing of the time and place of such hearing subscribed to by the petitioner shall be mailed to the department of taxation and public administrator not less than 20 days before such hearing upon such blanks and containing such pertinent information as the department may require, or such notice may be waived in writing by the department of taxation and public administrator. No other service of such notice shall be required unless ordered by the court. In any such proceedings wherein such notice has been given to the public administrator or waived by him in writing and it appears clearly evident to the court that no inheritance tax is due or payable on the transfer, the court may make such determination without such notice to or waiver by the department of taxation.

History: 1951 c. 53.

72.18 Inheritance tax counsel; investigations. (1) It shall be the duty of the department of taxation to supervise the administration of, and to investigate and cause to be investigated the administration of the inheritance tax laws, and such particular estates to which the inheritance tax laws apply, throughout the various counties of the state, and to cause to be made and filed in its offices reports of such investigation together with specific information and facts as to particular estates that may seem to re-

quire especial consideration and attention by the legal department of the state. Whenever it is deemed necessary, the department of taxation may employ accountants, appraisers or other special assistance in appraising or determining the value of property in any estate, and the expense thereof shall be paid out of the inheritance tax funds in his hands by the county treasurer of the proper county upon the certificate of the county judge when certified to him by the department.

(2) The department of taxation shall appoint an inheritance tax counsel who shall have charge of the inheritance tax work under the supervision of the department, and who shall be provided with such further assistance from time to time from the regular force of the department as may be necessary and expedient. Such inheritance tax counsel shall devote his time to the work of inheritance tax investigations, and he shall personally make such investigations at the county courts from time to time as deemed advisable. He shall counsel and assist public administrators and shall appear in the county courts when requested by the county judge or public administrator. He shall file with the department triplicate reports on the first day of January, April, July and October each year, together with such additional triplicate reports of particular estates from time to time as seem to require the special attention of the legal department. One copy of such reports shall be filed with the department of taxation, one copy shall be submitted to the attorney-general by the department with such recommendation thereon as it may deem advisable for the due administration of the inheritance tax laws, and one copy may in the discretion of the department be submitted by it to the county judge or public administrator of the county reported on with such recommendation as the department may deem wise and expedient.

(3) The department and its inheritance tax counsel, in the conduct of inheritance tax affairs, shall have the same and similar powers and authority for gathering information and making investigations as is conferred by law on the department in the performance of its other duties. The department shall biennially report to the legislature at the opening of the sessions the general result of its labors and investigations in inheritance tax matters during the previous biennial period, together with specific reports of the several counties where the administration of the inheritance tax laws has been lax and unsatisfactory, with such recommendations for action thereon by the legislature as may be deemed advisable and proper.

(4) The department and its inheritance tax counsel shall also gather information and make investigations and reports concerning the estates of nonresident decedents within the provisions of the inheritance tax laws, and shall especially investigate the probate and other records for such probable estates without the state and report thereon from time to time to the legal department of the state and to the public administrator of the proper county court for appropriate legal action.

(5) It shall be the duty of the legal department of the state to carry out and enforce the recommendations and directions of the department of taxation in all matters pertaining to the conduct of inheritance tax affairs; and in every estate in which the amount of inheritance tax collectible shall exceed or probably exceed the sum of \$1,000, there shall be no compounding, composition, or settlement of the taxes under the authority conferred by section 72.21, or otherwise, until the department of taxation or its inheritance tax counsel shall have investigated such estate and made a report thereon, nor until the department consents to such compounding, compromise, or settlement.

(7) The department of taxation shall prescribe such forms and prepare such blanks as may be necessary in inheritance tax proceedings in the county courts of the state; and such blanks shall be printed at the expense of the state and furnished to the county courts upon the request of the judge or clerk.

(8) Every corporation, partnership, association, individual, order or society authorized to transact life, accident, fraternal, mutual benefit or death benefit insurance business within this state, or whether authorized to transact such business or not, who shall pay any insurance or death benefit in excess of \$1,500 upon the death of a resident of this state, shall give notice of such payment to the department of taxation within 10 days from the date of such payment. Such notice shall be given on the forms prescribed by the department of taxation and such notice shall set forth such information as the department of taxation shall prescribe.

(9) On the first day of every month the county judge of every county within the state shall notify the department of taxation of the name and title of such proceedings as were instituted in the county court of such county within the prior month with respect to probate of wills, administration of estates, certificates of descent, and certificates of survivorship. Such notice shall be given on the forms prescribed by the department of taxation, and such notice shall contain such information as the department of taxation shall prescribe.

72.19 Quarterly reports by county treasurer; tax to be paid to state. Each county treasurer shall make a report under oath, to the department of taxation, on or prior to the fifth day of January, April, July and October of each year, of all taxes received by him under the inheritance tax laws, up to the first day of each of said months, stating for what estate and by whom and when paid. The county treasurer shall also set forth in such report the fees of the public administrator paid in each such estate, the expense of collection, the portion of each tax collection payable to the state and the aggregate amount of the payment to the state of its portion of said tax collections. The form of such report shall be prescribed by the department of taxation and it shall be its duty to verify the accuracy of said report by comparing such with duplicate tax receipts and other information available in its files. The county treasurer shall at the same time pay the state treasurer the state's share of all taxes received by him under the inheritance tax laws and not previously paid into the state treasury. For all said amounts due the state but not paid into the state treasury within the times herein required, he shall pay interest at the rate of 10 per cent per annum.

72.20 Tax retained by county. The county treasurer shall retain for the use of the county, out of all taxes paid and accounted for by him each year under sections 72.01 to 72.24, inclusive, seven and one-half per cent on all sums so collected by or paid to said treasurer.

72.21 Expectant estates; compounding tax; agreement, filing. The public administrator with the consent of the department of taxation, expressed in writing, is authorized to enter into an agreement with the executor, administrator, or trustee of any estate therein situated, in which remainders or expectant estates have been of such a nature or so disposed and circumstanced that the taxes therein were held not presently payable or where the interest of the legatees or devisees are not ascertainable under the provisions of 72.01 to 72.24, or whenever a tax is claimed on account of the transfer of any property of a nonresident decedent, and to compound such taxes upon such terms as may be deemed equitable and expedient and to grant discharges to said executors, administrators or trustees upon the payment of the taxes provided for in such composition, provided, however, that no such composition shall be conclusive in favor of said executors, administrators, or trustees, as against the interest of such cestui que trust as may possess either present rights or enjoyment or fixed, absolute, or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto either personally when competent or by guardian. Composition or settlement made or effected under the provisions of this section shall be executed in triplicate and one copy shall be filed with the department of taxation; one copy in the office of the judge of the county court in which the tax was paid; and one copy to be delivered to the executors, administrators, or trustees, who shall be parties thereto.

72.22 Receipts; copies; fee; recording. Any person shall, upon the payment of the sum of 50 cents, be entitled to a receipt from the county treasurer of any county, or the state treasurer, or at his option to a copy of a receipt that may have been given by such county treasurer or state treasurer for the payment of any tax under 72.01 to 72.24, under the official seal of such county treasurer, or state treasurer, which receipt shall designate upon whose estate such tax shall have been paid, by whom, and whether in full of such tax. Such receipt may be recorded in the office of the register of deeds of the county in which such estate is situate in a book to be kept by him for that purpose, which shall be labeled "transfer tax."

72.23 Taxes; payment; application. All taxes levied and collected under sections 72.01 to 72.24, inclusive, less any expenses of collection, the percentage to be retained by the county, and the deduction authorized under sections 72.01 to 72.24, inclusive, shall be paid into the treasury of the state for the use of the state, and shall be applicable to the expenses of the state government and to such other purposes as the legislature may by law direct.

72.24 Definitions. As used in ss. 72.01 to 72.24:

(1) The words "estate" and "property" mean the real and personal property or the interest therein of the testator, intestate, grantor, bargainor, vendor or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees or successors and include all personal property within or without the state.

(2) The word "transfer" includes 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 prescribed in ss. 72.01 to 72.24.

(3) The word "decendent" includes the testator, intestate, grantor, bargainor, vendor or donor.

(4) The words "county treasurer," "public administrator" and "district attorney" mean the treasurer, public administrator and district attorney of the county whose county court has jurisdiction as provided in s. 72.12.

(5) The words "the intestate laws of this state" include a husband's right as tenant by the curtesy, the statutory rights and allowances to a child, the dower, homestead and other statutory rights and allowances of a widow, and any other rights acquired by contract in lieu of dower.

History: 1953 c. 61.

72.50 Estate tax imposed. In addition to the taxes imposed by ss. 72.01 to 72.24, an estate tax is hereby imposed upon the transfer of all estates which are subject to a United States estate tax where the decedent at the time of his decease was a resident of this state. The amount of said estate tax shall be equal to the extent, if any, of the excess of the credit allowable upon said United States estate tax, over the aggregate amount of all estates, inheritance, transfer, legacy and succession taxes paid to any state or territory or the District of Columbia, in respect to any property in the estate of said decedent. Provided, that such estate tax hereby imposed shall in no case exceed the extent to which its payment will effect a saving or diminution in the amount of the United States estate tax payable by or out of the estate of the decedent had ss. 72.50 to 72.61 not been enacted. The tax imposed herein shall be collected by the several county treasurers for the use of the state, and shall be accounted for and paid into the state treasury within the time and in the manner specified in s. 72.19.

History: 1955 c. 230.

72.51 When payable. The estate tax shall be payable to the county treasurer of the county in which such estate is being probated at the same time or times at which the United States tax is payable and shall bear interest, if any, at the same rate and for the same period as such United States tax.

As to applicability of discount, see 72.06, citing 40 Atty. Gen. 86.

72.52 Liability. Administrators, executors, trustees and grantees under a conveyance, made during the grantor's life and taxable hereunder, shall be liable for such taxes with interest, until the same have been paid.

72.53 Lien. Said taxes and interest shall be and remain a lien on the property subject to the taxes until the same are paid.

72.54 Extension of time. The county court of the county in which such estate is being probated may, for cause shown, extend the time of payment of said tax whenever the circumstances of the case require.

72.55 Filing U. S. returns and certificate; determination of tax; appeal. The legal representative of the estate of any decedent who was a resident of this state at the time of his death and whose estate may be subject to the payment of a United States estate tax shall file duplicates of the United States estate tax returns with the county court of the county in which such estate is being probated. He shall also file with such court a certificate or other evidence from the internal revenue service showing the amount of the United States estate tax as computed by that service. The county court shall hear all parties desiring to be heard with respect to the amount of state estate tax and shall enter an order determining such tax and the amount thereof so due and payable. Any person in interest aggrieved by such determination shall have the same right of rehearing and appeal as is provided for in the determination of inheritance taxes.

History: 1951 c. 247 s. 29; 1955 c. 10.

72.56 Intent of sections 72.50 to 72.61. It is hereby declared to be the intent and purpose of ss. 72.50 to 72.61 to obtain for this state the benefit of the credit allowed upon the said United States estate tax, to the extent that this state may be entitled thereto, by imposing additional taxes and the same shall be liberally construed to effect this purpose.

History: 1955 c. 230.

72.57 Rules and regulations. The department of taxation may make such rules and regulations and prepare such forms relative to the assessment and collection of the tax provided for in sections 72.50 to 72.61 not inconsistent with law, as may be necessary to carry out the intent of these sections.

72.58 Sections 72.50 to 72.61. Sections 72.50 to 72.61 shall become void in respect to the estates of persons who die subsequent to the effective date of the repeal of the United States estate tax, or the credit allowable thereon for the estates, inheritance, transfer, legacy or succession taxes paid to any state or territory or the District of Columbia.

History: 1955 c. 230.

72.59 Adjustments. If the amount of the United States estate tax shall be increased or decreased as affecting an estate taxable hereunder subsequent to the payment of the tax as imposed by s. 72.50, the tax imposed upon such estate hereunder shall be changed accordingly. Any additional tax shall be determined by the county court and paid within 30 days after the date of the entry of the order determining such additional tax. Any excess tax received by the state treasurer shall be refunded within 30 days after the amount thereof shall have been certified to said state treasurer by the county court.

History: 1955 c. 230.

72.60 Estates affected. The provisions of ss. 72.50 to 72.61 shall apply to the estates of all decedents dying after July 4, 1931 and shall also apply to the estate of any decedent with respect to which the United States estate tax has not been paid at said time.

72.61 Provisions applicable. The provisions of chapter 72, relating to the tax on inheritances and transfers, shall apply to the taxes imposed by sections 72.50 to 72.61 in so far as the same are applicable and not in conflict with the provisions hereof.

72.74 Emergency tax on inheritances. (2) In addition to the taxes imposed by sections 72.01 to 72.24 and 72.50 to 72.61, an emergency tax for relief purposes, rehabilitation of veterans of World War II, construction and improvements at state institutions and other state property and for post-war public works projects to relieve post-war unemployment is hereby imposed upon all transfers of property which are taxable under the provisions of said sections which said tax shall be equal to 30 per cent of the tax imposed by said sections.

(3) The emergency tax upon transfers of property imposed in subsection (2) shall be administered, assessed, collected and paid in the same manner, at the same time, and subject to the same regulations that are applicable, respectively, as provided for the administration, assessment, collection and payment of the taxes imposed in chapter 72 of the statutes; provided, however, that the entire amount of said emergency tax shall be collected and paid into the general fund.

(5) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax herein imposed upon any ground whatever, but the aggrieved taxpayer shall pay the tax as and when due and if paid under protest at any time within one year from the date of such payment sue the state treasurer in an action at law to recover the tax so paid, with interest at 6 per cent thereon, from the date of payment. If it is finally determined that said tax, or any part thereof, was wrongfully collected for any reason, it shall be the duty of the state treasurer then in office to pay the amount of such tax adjudged to have been wrongfully collected, together with interest thereon at the rate of 6 per cent per annum out of the general fund of the state to the taxpayer entitled thereto. A separate suit need not be filed for each separate payment made by any taxpayer, but a recovery may be had in one suit for as many payments as may have been made, and which are not barred by the limitation of one year herein imposed.

History: 1951 c. 261 s. 10.

On remand of the record in *Treichler v. State*, 338 US 251, 70 S. Ct. 1 (Estate of Miller, 254 W 24), a recomputation of the state emergency inheritance tax by the department of taxation, measured by the federal estate-tax credit attributable to property located within the state, is approved by the state supreme court as accomplishing the desired purpose of avoiding the prohibited taxation of tangible property having a situs

outside the state. *Estate of Miller*, 257 W 439, 43 NW (2d) 428.

Additional 30 per cent tax on inheritances invalid so far as tax is measured by tangible property outside Wisconsin. *Treichler v. Wisconsin*, 338 US 251, 70 S. Ct. 1, 18 L. Ed. 129.

As to applicability of discount, see 72.06; citing 40 Atty. Gen. 86.

72.75 Gift tax; transfers taxable. To provide revenue for the rehabilitation of returning veterans of World War II, construction and improvements at state institutions and other state property, and post-war public works projects to relieve post-war unemployment, an emergency tax is imposed upon transfers of property, real, personal or mixed, or any interests therein or income therefrom, in trust or otherwise, to any person, association or corporation, which are made subsequent to July 9, 1933, in the following cases, except as hereinafter provided.

(1) When the transfer is by gift from any person who at the date of such gift was a resident of the state.

(2) When the transfer is by gift of property within the state or within its jurisdiction and the donor was a nonresident of the state at the date of such gift.

(3) From and after January 1, 1944, whenever any person shall exercise or release a power of appointment derived from any disposition of property, whether heretofore or hereafter made, such exercise or release, whether in whole or in part, is deemed a transfer of property taxable in the same manner as though the property to which such power of appointment relates belonged absolutely to the person possessing such power. For the

purpose of this section, the term "power of appointment" means any power to appoint exercisable by any person either alone or in conjunction with any other person, except a power to appoint within a class which excludes the donee of the power and is restricted to the husband, wife and lineal issue of the creator of the power, provided that such power was created on or after October 21, 1942, or if created prior to October 21, 1942, was subsequently modified or limited by release or otherwise to the type of restricted power described herein; and provided that, with respect to any transfer made or taking effect on or after July 22, 1951, this exception shall not include any power to appoint, to the extent of any property with respect to which such power to appoint is validly exercised by creating another power to appoint. As used in this subsection, the term "lineal issue" includes an adopted child and a mutually acknowledged child as defined in s. 72.02 (1).

Note: (3) as printed here differs from (3) as printed in ch. 510, 1951 session laws, since the act was reenrolled after the session laws were published.

(4) No tax shall be imposed upon the transfer of any property which is taxable under the inheritance tax law of this state, and any tax paid upon the transfer of any property under the provisions of sections 72.75 to 72.81 may be applied as a credit upon any inheritance tax which may be imposed under the inheritance tax law upon the same transfer, and no tax shall be imposed upon any tangible personal property of a resident donor when such property is located without this state; provided, however, such property is not without this state temporarily.

History: 1951 c. 510; 1957 c. 144.

Where a donor, nonresident of Wisconsin, signed a trust agreement in Switzerland on June 8, 1946, giving certain securities to an Illinois trustee in consideration of the acceptance of such trust agreement by the trustee, and the trust agreement was in the hands of the donor's attorney-agent in Wisconsin, and the property was in the hands of the donor's agent in Wisconsin, until June 17th, when the donor's agents delivered the trust agreement and the property to the trustee in Illinois, and the trustee accepted, there was no effective transfer of the gift until June 17th; and hence, the transfer being made in Illinois by a donor not a resident of Wisconsin to a donee not a resident of Wisconsin, and the property then not being in Wisconsin or

under its jurisdiction, the transfer was not subject to gift tax. *Wuesthoff v. Dept. of Taxation*, 261 W 98, 52 NW (2d) 131, 261 W 105, 52 NW (2d) 134.

Where both the donor and the donee were nonresidents of Wisconsin and the securities which were the subject of the gift had been removed to Illinois and were delivered there at the time the gift was made there, such securities did not then have a tax situs in Wisconsin by reason of the fact that for many years prior thereto they had been located in Wisconsin and administered there by the donor's agent. (*Van Dyke v. Tax Comm.* 235 W 128, distinguished.) *Wuesthoff v. Dept. of Taxation*, 261 W 98, 52 NW (2d) 131, 261 W 105, 52 NW (2d) 134.

72.76 Taxable value of gifts; how fixed. (1) If the transfer is made in property, the clear market value thereof at the date of the gift shall be considered the taxable value of the gift. Where property is transferred, sold or exchanged for less than an adequate and full consideration in money or money's worth, then the amount by which the clear market value of the property exceeded the consideration received shall, for the purpose of the tax imposed by sections 72.75 to 72.81, be deemed a gift and shall be included in computing the amount of gifts made during the year.

(2) All transfers to the same donee by the same donor within the same calendar year shall be added together and the aggregate of such transfers shall be considered as one transfer for the purposes of taxation under sections 72.75 to 72.81, and the rates of tax hereinafter prescribed shall be applied to the aggregate of such transfers made within the same calendar year.

(3) The commissioner of insurance shall, on application of the department of taxation, determine the value of any future or contingent estates, income, or interests therein, limited, contingent, dependent or determinable upon the life or lives of the person or persons in being to whom the transfer is made and certify the same to the department, and his certificate shall be presumptive evidence that the method of computation adopted therein is correct.

(4) Whenever a transfer of property is made upon which there is, or in any contingency there may be, a tax imposed, such property shall be appraised at its clear market value as of the time of the transfer. The value of every future or limited estate, income, interest or annuity dependent upon any life or lives in being, shall be determined by the rule, method, standard of mortality and rate of interest employed by the commissioner of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies, except that for every future or limited estate, income, interest or annuity the value of which is not based upon an assumed rate of interest, the rate of interest for making such computation shall be 5 per cent per annum. The tax so determined shall be construed to be upon the transfer of a proportion of the principal or corpus of the property equal to the present value of such future or limited estate, income, interest or annuity, and not upon any earnings or income of said property produced after the gift, and such earnings or income shall not be exempt from income tax.

(5) When property is transferred in trust or otherwise and the rights, interests or estates of the transferees are not ascertainable under sections 72.75 to 72.81, and are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, the value of the rights, interests or estates of the transferees shall be determined by the department of taxation or assessor of incomes, and such determination shall be deemed presumptively to be correct.

(6) Where an estate for life or for years can be divested by the act or omission of the donee, it shall be taxed as if there were no possibility of such divesting.

(7) A gift shall be complete for tax purposes when the donor has divested himself of all beneficial interest in the property transferred and has no power to reconstitute any such interest in himself or his estate.

In determining whether a transfer is subject to gift tax, the rule that a tax cannot be imposed without clear and express language must be observed. In general, a transfer is not a "gift" when the transferor retains control and dominion of the subject of the transfer. Where joint bank accounts in the name of husband and wife, although consisting entirely of funds from earnings and investments of the husband, were subject to withdrawal in whole or in part by either the husband or the wife, there was no "gift" to the wife, within 72.76 (7), and on the death of the husband one half of the balance remaining in such accounts was not subject to the gift tax imposed by 72.75. Dept. of Taxation v. Berry, 258 W 544, 46 NW (2d) 757.

72.77 Tax rates. When the value of the transfers within the same calendar year shall exceed the exemption specified in section 72.80 and shall not exceed \$25,000 the tax thereon shall be:

(1) Two per centum where the donee shall be the husband, wife, lineal issue, lineal ancestor of the donor, or any child to whom such donor for not less than 10 years prior to the date of such transfer stood in the mutually acknowledged relation of parent, or any lineal issue of such mutually acknowledged child; provided, however, such relationship began at or before the child's 15th birthday and was continuous for said 10 years thereafter. The terms lineal issue and lineal ancestor shall include such relationship established through legal adoption.

(2) Four per centum where the donee shall be the brother, sister or a descendant of a brother or sister of the donor, the wife or widow of a son or the husband of a daughter of the donor.

(3) Six per centum where the donee shall be the brother or sister of the father or mother or a descendant of the brother or sister of the father or mother of the donor.

(4) Eight per centum where the donee shall be of any other degree of collateral consanguinity than as heretofore stated, or shall be a stranger to the blood of the donor, or shall be a body politic or corporate.

72.78 Secondary rates; surtax. The rates in section 72.77 are for convenience termed the "primary rates." When the value of the gift exceeds \$25,000 the rates of tax on such excess shall be as follows:

(1) Upon all in excess of \$25,000 and up to \$50,000, two times the primary rates.

(2) Upon all in excess of \$50,000 and up to \$100,000, three times the primary rates.

(3) Upon all in excess of \$100,000 and up to \$500,000, four times the primary rates.

(4) Upon all in excess of \$500,000, five times the primary rates.

(5) The tax, however, at the rates specified by sections 72.77 and 72.78 shall not exceed 15 per cent of the value of such gift.

(6) In addition to the tax imposed at the rates hereinbefore specified in sections 72.77 and 72.78, an emergency tax is hereby imposed upon all transfers of property by gift which are taxable under the provisions of sections 72.75 to 72.81, which said tax shall be equal to 30 per cent of the tax imposed at the rates hereinbefore specified in sections 72.77 and 72.78.

72.79 Exemptions to municipalities and charities. The following transfers are exempt from such tax:

(1) All transfers of property to or by any corporation, trust, community chest fund, foundation or association, operating principally within this state, organized and operated exclusively for religious, charitable, scientific, educational or municipal purposes, or for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of any private stockholder or individual; or to or by any national organization of veterans of the armed forces of the United States or subordinate unit thereof, which shall use such property exclusively for the purposes of its organization within this state; or to or by the American National Red Cross or any chapter thereof; or to or by any national health organization or subordinate unit thereof; or to the state or any political subdivision thereof for exclusively public purposes; or to the United States. For the purposes of this section, a corporation, trust, community chest fund, foundation or association shall be considered as operating principally within this state if 50 per cent or more of its funds, expended during the period from July 9, 1933, to

December 31, 1948, or to the close of its fiscal year immediately preceding the date of such transfer (or expended in its first fiscal year in the case of a transfer during such fiscal year to or by such an organization created after December 31, 1948), whichever is later, have been used within this state for the purposes of its organization or have been contributed to a donee or donees transfers to which are exempt under this section.

(2) All property transferred to any corporation, organization, association or foundation of this state, in trust and for the direct financial benefit of any town, city, school district, village or county of this state shall be exempt.

(3) The exemptions granted in the foregoing subsections (1) and (2) shall extend to transfers to or for the use of any municipal or private corporation, trust, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific, educational or municipal purposes, or for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of a private stockholder or individual, and which operates principally in another state, commonwealth, territory or district, including institutions maintained by the state, commonwealth, territory or district itself, if the law of such other state, commonwealth, territory or district on the date of the gift granted a like and equal exemption to similar transfers from donors resident therein to or for the use of municipal or private corporations, trusts, community chest funds, foundations or associations, as the case may be, of similar character and purpose and operating principally in Wisconsin, including institutions maintained by the state of Wisconsin itself.

History: 1951 c. 483.

72.80 Personal exemptions. The following personal exemptions from such tax to be taken out of the first \$25,000 transferred are hereby allowed:

(1) Property of the clear value of \$1,000 transferred in any calendar year by any donor to any donee shall be exempt.

(2) In addition to the exemption provided by subsection (1), property of the clear value of \$15,000 transferred by the donor to his wife, but such additional exemption shall be allowed but once. The clear value of property transferred by a donor to his wife, in excess of \$1,000 annual exemption provided by said subsection (1), shall be aggregated from year to year and the additional exemption applied thereto until such clear value equals such \$15,000 exemption.

(3) In addition to the exemption provided by subsection (1), property of the clear value of \$5,000 transferred by the donor to her husband, but such additional exemption shall be allowed but once. The clear value of property transferred by a donor to her husband, in excess of the \$1,000 exemption provided by said subsection (1), shall be aggregated from year to year until such clear value equals such \$5,000 exemption.

(4) In addition to the exemption provided by subsection (1), property of the clear value of \$2,000 transferred by the donor to a lineal ancestor or lineal descendant, but such additional exemption shall be allowed but once. The clear value of property transferred by a donor to a lineal ancestor or lineal descendant in excess of the \$1,000 exemption provided by subsection (1), shall be aggregated from year to year until such clear value equals such \$2,000 exemption. The term lineal descendant shall include such relationship established through legal adoption.

(5) All property transferred, money, service or other thing of value, paid, furnished or delivered by any corporation, organization or association to its employes, or to any organization of its employes, directly or indirectly, or to any person, firm or corporation for them or it, to cover insurance, sickness and death benefits, pensions, relief activities, or to any other employes' benefit fund of any kind, and medical service to such employes and their families shall be exempt.

(6) All reasonable amounts of property transferred, money, service or other thing of value, paid, furnished or delivered by any individual to anyone who is dependent upon him for support, when such property, money, service or other thing of value is transferred and paid or furnished for the current maintenance, support or education of such dependent, shall be exempt.

72.81 Administrative provisions; filing of returns. (1) It shall be the duty of the department of taxation to supervise the administration of the tax imposed by sections 72.75 to 72.81 and in the performance of such duty the department of taxation and the assessors of income shall possess all powers now or hereafter granted to the department of taxation and the assessors of income in the assessment of personal property and incomes, including the power to appraise the value of transfers; and it is authorized and empowered to employ such attorneys, accountants, clerks and assistants as may be necessary to carry out the provisions of said sections. The department of taxation shall prescribe such forms, prepare such blanks, and make such regulations as shall be necessary; and such blanks and regulations shall be printed at the expense of the state.

(2) On or before April 15 in each year the donor and the donee of any transfers during the preceding year shall, if the aggregate value of such transfers exceed \$1,000, report such transfers and the tax thereon to the assessor of incomes of the assessment district in which such donor and such donee file their respective income tax returns except that if the donor is a nonresident, such reports shall be filed with the assessor of incomes of the district in which the donee resides, and that if the donee is a nonresident, such donee shall report such transfers to the assessor of incomes of the district in which the donor resides. If both the donor and donee are nonresidents, or if either of them is a corporation, such reports shall be made direct to the department of taxation. Such reports shall be made on the forms prescribed by the department of taxation, and shall disclose such information as is required thereon. Such gift tax reports, and the payments of the tax referred to in subsection (3) shall be considered made within the time specified if mailed in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked before midnight of April 15, provided such report or payment is actually received by the department of taxation within 5 days of April 15.

(3) The tax imposed shall be due and payable on April 15 specified for filing the report of the transfers, and shall be paid by the donee to the assessor or the department of taxation with whom the donee is required to file the report of the transfers. If the tax is paid on or before such date a discount of 5 per cent of the tax shall be allowed, but if it is not paid on or before said date interest shall be charged and collected thereon at the rate of 10 per cent per annum from said date until it is paid, and then both the donee and donor shall be jointly and severally liable for such tax and interest. Payment by the donor in any case shall be a taxable transfer to the donee at the time the payment is made. If any transfers, whether heretofore or hereafter made, have not been or are not reported within the time and in the manner specified by subsection (2), interest shall be charged and collected on the tax at the rate of 10 per cent per annum from the date the report was due until such tax is paid.

(4) As soon as practicable after the report is filed, but within 3 years thereafter, the department of taxation or assessor of incomes shall audit it and shall assess any additional tax that may be due. Notice of the assessment of the additional tax shall be given to both the donor and donee by ordinary mail. If the additional tax is paid within 30 days from the receipt of the notice thereof, interest shall be charged and collected thereon at the rate of 6 per cent per annum from the date specified for the filing of the report of the transfers until such payment. If it is not paid within such time, then interest shall be charged and collected from such date for the filing of the report at the rate of 10 per cent per annum until such tax is paid, except that in the event of an appeal from the assessment of additional tax the rate of interest shall be 6 per cent until 30 days after such appeal is finally determined, and thereafter it shall be 10 per cent until the tax is paid.

(5) All provisions of the income tax law, not in conflict with the provisions of sections 72.75 to 72.81, relating to the assessment of income taxes and hearing and appeal thereon, the preparation of assessment and tax rolls, the certification of taxes due, the correction thereof, and the collection and refund of income taxes, shall govern the assessment of taxes due under said sections. The provisions of sections 73.01 and 73.015 shall apply to the taxes due under sections 72.75 to 72.81.

(6) All taxes imposed by ss. 72.75 to 72.81 shall be and remain a lien upon the property transferred until paid, but not exceeding 10 years from the filing of the report of the transfer. Any part of the property comprised in the gift sold by a donee or successor in title to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien herein imposed and the lien, to the extent of the value of such gift, shall attach to all the property of the donee (including after acquired property) except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth. Notice or knowledge of a conveyance to joint tenants or tenants in common shall not constitute actual or constructive notice of a gift, tax or lien in respect to property so transferred. Whenever the department of taxation is satisfied that the collection of the tax will not thereby be jeopardized, it shall have the power to release the lien hereby imposed with respect to all or any part of the property transferred. The release duly executed may be recorded in the office of the register of deeds of the county in which the property described therein is situated.

(7) Whenever, in the judgment of the department of taxation, it may be necessary, the department of taxation may require any person, by notice served upon him by registered mail, to make a return or render under oath such statements, or keep such records, as the department of taxation deems sufficient to show whether or not such person is liable for a tax under sections 72.75 to 72.81. If any person required under said sections to file a return fails to file such return or keep any records, or supply any information within the time and in the manner prescribed by law or by regulation made under

the authority thereof, or upon notice by the department of taxation to do so, an additional tax equal to 25 per cent of the amount of tax due shall be assessed and collected in the same manner, at the same time, and subject to the same conditions as apply to the gift tax imposed by said sections.

(8) Any person who wilfully attempts in any manner to evade or defeat any such tax imposed or the payment thereof, or who makes any false or fraudulent return or statement, with intent to evade or defeat the assessment required to be made, shall in addition to other penalties provided, be guilty of a misdemeanor and upon conviction thereof be fined not less than \$100 nor more than \$5,000, or be imprisoned not to exceed one year, or both, at the discretion of the court, together with the costs of prosecution. Any person who wilfully aids or assists in the preparation or presentation of a wilfully false or fraudulent return or of any information for the purpose of the assessment or collection of such tax, whether such falsity or fraud is with or without the knowledge or consent of the person required to make the return or supply such information, will be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100, nor more than \$5,000, or be imprisoned not to exceed one year, or both, at the discretion of the court, together with the costs of prosecution.

(9) It shall be the duty of the legal department of the state to carry out and enforce the recommendations and directions of the department of taxation in all matters pertaining to gift tax affairs; and in every matter in which the amount of gift tax collectible shall exceed or probably exceed the sum of \$1,000, there shall be no compounding, composition or settlement of the taxes until the department of taxation shall have consented in writing to such compounding, compromise or settlement.

(10) The department of taxation is authorized to enter into an agreement with any person liable for a tax on a transfer in which remainders or expectant estates are of such a nature or so disposed and circumstanced that the value of the interest transferred is not ascertainable under the provisions of sections 72.75 to 72.81, and to compound and settle such taxes upon such terms as may be deemed equitable and expedient.

(11) The word "transfer" as used in sections 72.75 to 72.81 shall be taken to include the passing of property or an interest therein, in possession or enjoyment, present or future, by deed, grant, bargain, sale or gift in the manner herein prescribed. The word "donor," "donee" or "person" as used in said sections shall include corporation, association, partnership or other bodies politic or corporate.

(12) Nothing in sections 72.75 to 72.81 shall in anywise be construed so that the provisions shall conflict, limit or modify in any respect the provisions of the inheritance, estates or income tax laws.

(13) Whenever any such transfer shall be made of stocks, bonds or other securities issued by any corporation, joint stock company, partnership or association, domestic or foreign, owning property or doing business in this state, or any interest therein, or in the assets thereof, all inventories, books, papers, income tax returns and records thereof shall be competent evidence in any court and shall be accessible to the department of taxation or its representatives for the purpose of ascertaining the true value of such stocks, bonds or other interests; and the department may order the production of any such inventories, books, papers, records and income tax returns, and may require the attendance and examination of any officer or employe of any such corporation, joint stock company, partnership or association.

History: 1955 c. 17.