CHAPTER 72

ESTATE TAX

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72.005 Purpose. The purpose of this chapter is to obtain for Wisconsin the benefit of the maximum credit allowable upon the United States estate tax, to the full extent that this state may be entitled, by imposing this tax. This chapter is to be liberally construed to effect this purpose.

History: 1971 c. 310; 1987 a. 27 s. 1538m; Stats. 1987 s. 72.005.

72.01 Definitions. In this chapter, unless otherwise specified:

(1) "Administration" means any proceeding relating to a decedent's estate whether decedent died testate or intestate.

(4) "Circuit court" means the circuit court which has jurisdiction under s. 72.27.

(6) "Death tax" is a tax imposed by a state, territory or district, because of a death or gift in contemplation of death, on property or a transfer of property, and includes estate, inheritance, succession, legacy and transfer taxes.

(7) "Decedent" means the deceased person.

(8) "Department" means the department of revenue.

(9) "Distributee" means any person to whom property is transferred by reason of a death or in contemplation of death other than in payment of a claim.

(9m) "District attorney" means the district attorney of the county whose circuit court has jurisdiction under s. 72.27.

(11) "Estate" means all property of a decedent transferred by reason of the decedent's death.

(11m) "Federal credit" means, for deaths occurring after September 30, 2002, and before January 1, 2008, the federal estate tax credit allowed for state death taxes as computed under the federal estate tax law in effect on December 31, 2000, and for deaths occurring after December 31, 2007, the federal estate tax credit allowed for state death taxes as computed under the federal estate tax law in effect on the day of the decedent's death.

(11n) "Federal estate tax" means, for deaths occurring after September 30, 2002, and before January 1, 2008, the federal estate tax as computed under the federal estate tax law in effect on December 31, 2000, and for deaths occurring after December 31, 2007, the federal estate tax as computed under the federal estate tax law in effect on the day of the decedent's death.

(12m) "File" means mail or deliver a document that the department prescribes to the department or, if the department prescribes another method of submitting or another destination, use that other method or submit to that other destination.

(13) "The intestate laws of this state" include statutory rights and allowances to a child and to a surviving spouse and any other rights of a surviving spouse acquired by contract in lieu of any statutory rights.

(14m) "Pay" means mail or deliver funds to the department or, if the department prescribes another method of submitting or another destination, use that other method or submit to that other destination.

(16) "Personal representative" means any person to whom letters to administer a decedent's estate have been granted by the court but does not include a special administrator.

(19) "Property" means any interest, legal or equitable, present or future, in real or personal property, or income therefrom, in possession and enjoyment, trust or otherwise, within or without this state.

(21) "Transfer" means the passing of property.

History: 1971 c. 310; 1973 c. 90; 1977 c. 187 s. 135; 1977 c. 418; 1977 c. 449 ss. 181, 497; 1981 c. 20, 317; 1983 a. 27, 186, 189, 212; 1985 a. 29, 261; 1987 a. 27; 1997 a. 27; 2001 a. 16.

Wisconsin's New Estate Tax. Wilcox. Wis. Law. Dec. 2001.

A History of the Wisconsin Inheritance Tax, Stark, 88 MLR 947 (2005).

72.02 Estate tax imposed. An estate tax is imposed upon the transfer of all property that is subject to a federal estate tax and that has a taxable situs in this state. The tax imposed is equal to the federal credit against the federal estate tax as finally determined. If only a portion of a decedent's property has a taxable situs in this state, the tax imposed is the amount obtained by multiplying the federal credit by a fraction the numerator of which is the value of the decedent's estate that has a taxable situs in this state and the denominator of which is the total value of the property in the estate that qualifies for the federal credit.

History: 1987 a. 27; 2001 a. 16.

The gross estate for purposes of calculating the estate tax is the taxable estate as determined under federal law. The statutes do not authorize DOR to add gifts made in contemplation of death to the federal taxable estate when calculating the estate tax. The amount of estate tax is determined by the federal credit for state death taxes provided under federal law. Any construction that results in a calculation of the estate tax that is not equal to the federal tax credit for state death taxes is inconsistent with the plain language of this section. Department of Revenue v. Estate of Schweitzer, 2008 WI App 2, 307 Wis. 2d 298, 744 N.W.2d 861, 06−0984.

Wisconsin's New Estate Tax. Wilcox. Wis. Law. Dec. 2001.

Time Runs Out on Wisconsin's Estate Tax. Reineke & Botham. Wis. Law. Dec. 2007.

72.03 Notice. Unless otherwise provided, where "notice" is required in this chapter it shall be given in the manner prescribed by s. 879.05.

History: 1971 c. 310.

72.045 Timely filing. Documents and payments required or permitted by this chapter that are filed by mail are on time if they are mailed in a properly addressed envelope, if the postage is paid, if the envelope is postmarked before midnight of the due date and if the department or the person that the department designates receives them no later than 5 days after the due date. Documents and payments that are not mailed are timely if they are received on or before the due date by the department or at the destination that the department prescribes.

History: 1991 a. 39; 1997 a. 27.

72.06 Confidentiality of tax returns. Sections 71.78 (1), (1m), and (4) to (9) and 71.83 (2) (a) 3. and 3m. apply to any information obtained from any person by the department on a death tax

return, report, schedule, exhibit or other document or from an audit report pertaining to the tax return.

History: 1979 c. 139, 221; 1987 a. 27; 1987 a. 312 s. 17; 2011 a. 68.

Cross−reference: See also ss. Tax 1.11 and 1.12, Wis. adm. code.

72.11 Subjects liable. (1) RESIDENTS AND NONRESIDENTS. A tax is imposed upon any transfer of property to any distributee in the following cases:

(a) When the transfer is from a person who dies while a resident of this state.

(b) When the transfer is of property within the jurisdiction of this state and the decedent was not a resident of this state at the time of the decedent's death.

(2) EXCEPTION; RECIPROCITY AS TO NONRESIDENT DECEDENTS. A transfer, which is made taxable under this chapter and is of a nonresident decedent's intangible personal property is not subject to the tax imposed by this chapter if a like exemption is allowed at the time of the death of the decedent by the laws of the state, territory or district of the decedent's residence in favor of residents of this state or if the state, territory, or district of the decedent's residence does not impose a tax on the transfer at death at the time of the death of the decedent.

History: 1971 c. 307, 310; 1973 c. 90; 1987 a. 27 s. 3200 (47); 1991 a. 316; 2003 a. 258.

72.21 Personal liability. (1) Each personal representative, special administrator, and trustee of a trust in existence and containing property on the date of the decedent's death, is severally liable for the tax imposed by this chapter, with interest, to the extent of the clear market value of all property under the control of that personal representative, special administrator or trustee, the transfer of which is subject to this tax. This liability extends to all taxes due under this chapter on all transfers to a distributee, and is not limited to the value of transfers of property in the control of the personal representative, special administrator or trustee.

(2) A trustee of a trust which comes into existence after the decedent's death and a distributee are liable for the tax imposed by this chapter, with interest, only to the extent of the clear market value of property transferred to the trustee or distributee.

History: 1971 c. 310; 1979 c. 1; 1987 a. 27 ss. 1504m, 3200 (47); 1991 a. 316.

Absent a direction to the contrary, the burden of the estate tax falls on the residue of the estate. Firstar Trust Co. v. First National Bank of Kenosha, 197 Wis. 2d 484, 541 N.W.2d 467 (1995), 93−2508. See also Estate of Sheppard v. Schleis, 2010 WI 32, 324 Wis. 2d 41, 782 N.W.2d 85, 09−1021.

72.22 Payment. (1) WHEN PAYABLE. Except as provided in s. 72.225, the tax imposed by this chapter shall be paid on the date 9 months after the decedent's death.

(2) ADVANCE PAYMENT. Anyone personally liable for a tax under this chapter may pay an estimated tax before the tax is determined.

(3) PAYMENT. Except as provided in s. 72.225, at the time that the return is filed, the full tax shall be paid. If a prepayment was made, any additional tax shown owing on the return, as filed, shall accompany the return.

History: 1971 c. 310; 1973 c. 90; 1979 c. 1, 34, 221; 1981 c. 20, 317; 1983 a. 27, 212, 248; 1985 a. 29, 261; 1987 a. 27 s. 1505m to 1507m, 3200 (47); 1995 a. 27; 1997 a. 27.

72.225 Installment payments; closely held businesses. (1) If a percentage of the federal tax on an estate may be paid in installments under section 6166 of the internal revenue code, the same percentage of the taxes under this chapter may be paid under the same installment schedule if written notice of the election to pay in installments is given to the department within 9 months after the decedent's death. The provisions on acceleration under section 6166 (g) of the internal revenue code apply to payments under this section. The interest rate on payments is 12 percent and is calculated from the date of death.

(2) Upon the filing of a notice under sub. (1), distributees of real estate shall provide the department a certified copy of a lien for unpaid taxes and interest on the property to secure payment, and shall record the lien in the office of the register of deeds of the county in which the property is located. Distributees of personal property, upon the filing of a notice under sub. (1), shall either provide a lien or provide the department a financial guarantee bond equal to the estimated tax and interest elected to be paid under sub. (1) to secure payment if the tax has not been determined. Upon determination of the tax, distributees of personal property shall provide a lien or provide a financial guarantee bond sufficient to secure payment of the tax and interest or pay the department the excess over the amount of tax and interest secured by the bond. The department may accept a lien affecting only part of the property if there is sufficient security to secure payment of the tax. Any distributee who fails to provide the security required under this subsection or who disposes of one−third or more of the property on which the tax is secured under this subsection, shall pay the tax in full.

History: 1995 a. 27.

72.23 Acceleration and interest. (1) If the tax imposed by this chapter is not paid when it is due under s. 72.22, interest is due and payable at the rate of 12 percent per year from date of death. In computing time under this section, the day of death is excluded. If any payment of tax or interest under s. 72.225 is not paid when due, the tax and interest due shall be paid upon notice by the department.

(2) The department or circuit court may waive interest on any additional tax arising from the discovery of property omitted in the inventory of total assets or in the original tax determination, if due diligence was exercised in determining the assets.

History: 1971 c. 310; 1973 c. 90; 1977 c. 29; 1977 c. 449 s. 497; 1981 c. 20; 1987 a. 27; 1995 a. 27; 1997 a. 291; 2005 a. 49.

72.235 Failure to file. Any person who fails to file a return by the date under s. 72.30 (1) is subject to a penalty of 5 percent of the tax due under s. 72.02 but not less than $25 nor more than $500.

History: 1991 a. 39.

72.24 Refunding. Whenever any amount has been paid in excess of the tax determined, the secretary of administration, upon certification by the department or circuit court, shall refund the excess to the payor or other person entitled thereto.

History: 1971 c. 310; 1973 c. 90; 1977 c. 449 s. 497; 2003 a. 33.

72.27 Jurisdiction of circuit court. (1) RESIDENTS. The circuit court for the county of which the decedent died a resident has jurisdiction to hear and determine all questions arising under this chapter and to do any act authorized by a circuit court in other matters or proceedings coming within its jurisdiction. If 2 or more courts are entitled to exercise jurisdiction, the court first acquiring it retains exclusive jurisdiction.

(2) NONRESIDENTS. The circuit court of Dane County has jurisdiction to hear and determine all questions relating to the determination and adjustment of the tax imposed by this chapter, if a tax appears due because of the death of a nonresident decedent and in which it does not otherwise appear necessary for regular administration. If a nonresident dies possessed of real or tangible personal property located within this state, the circuit court of the county in which the property is located shall have concurrent jurisdiction with the circuit court for Dane County.

History: 1971 c. 310; 1973 c. 90; 1977 c. 449; 1987 a. 27 s. 3200 (47).

72.30 Determination of tax. (1) FILING REQUIREMENTS. (a) Except as provided in par. (b), if a federal estate tax return is required, the personal representative, special administrator, trustee, distributee or other person interested shall prepare the return for the tax under this chapter, compute the tax due under this chapter, and on or before the due date, as extended, of the federal estate tax return file the return for the tax under this chapter with a copy of the federal estate tax return and a copy of all documents submitted with the federal estate tax return.

(b) The personal representative, special administrator, trustee, distributee, or other person interested shall prepare the return for

the tax under this chapter in the manner prescribed by the department.

(3) CERTIFICATE OF TAX. Upon receipt of the return and payment of the tax, the department shall issue a dated certificate showing the amount of tax and any interest.

(4) HEARING IN CIRCUIT COURT. The attorney general, department, district attorney or any person dissatisfied with the appraisal, assessment or determination of the tax due under this chapter may apply for a hearing before the circuit court within 6 months from the date the certificate in sub. (3) is issued. The applicant must give a written notice to the court stating the grounds of the application. No statute of limitations shall run against the department in cases of fraud or collusion or where property is not disclosed in the return.

(7) COLLECTION. In addition to its powers to collect taxes due under this chapter, the department may proceed in the manner provided in ss. 71.91 (5) and (7). All payments under this chapter after their due date shall be applied first in discharging costs and interest and the balance applied on the tax principal.

History: 1971 c. 310; 1973 c. 90; 1975 c. 41 s. 52; 1975 c. 331; 1977 c. 449 s. 497; 1979 c. 1; 1985 a. 278; 1987 a. 27; 1987 a. 312 s. 17; 1991 a. 39; 1997 a. 27, 35, 252; 2001 a. 16.

Sub. (4) did not bar court review of a tax dispute that arose more than 6 months after the tax certificate was issued. The department must issue a certificate under sub. (3) each time a tax determination is made on an amended return. In Matter of Estate of Halsted, 116 Wis. 2d 23, 341 N.W.2d 389 (1983).

72.33 Adjustments. (2) A person who is entitled to a refund of the federal estate tax or liable for additional payments of that tax shall, within 30 days after receiving notice of that fact, do the following:

(a) Submit to the department copies of any additional papers or supporting documents required to be filed with the federal government.

(b) Compute the amount of any refund or additional tax and report the same to the department, together with any additional tax due.

(3) Any refund which the department finds due shall be made within 30 days after receipt of the report under sub. (2) (b).

History: 1971 c. 310; 1975 c. 41 s. 52; 1975 c. 331; 1979 c. 1; 1985 a. 278; 1987 a. 27; 1991 a. 39; 1997 a. 27.

72.34 Notice of obligations. Every person liable for transmitting to the estate or a beneficiary of a deceased employee or former employee an annuity, bonus, pension or other benefit under a retirement, deferred compensation or profit−sharing plan taxable under this chapter, directly or through a trust or fund created by the employer for such purpose, shall give notice of such obligation to the department within 30 days following the date of payment, or the date of the initial payment if more than one payment is forthcoming, to the estate or any beneficiary of such employee or former employee.

History: 1971 c. 310; 1973 c. 90; 1977 c. 29, 449; 1987 a. 27; 1997 a. 27.

72.35 Interstate arbitration of death taxes. (1) ARBITRATION AGREEMENT. When the department and the taxing authority of another state each claim that a decedent was a resident of its state on the date of the decedent's death, the department may make a written agreement with the other taxing authority and with the personal representative, special administrator or trustee, to settle the dispute or submit the controversy to a panel consisting of any uneven number of arbitrators. Parties to the agreement shall select the arbitrators.

(2) POWERS OF THE PANEL. The panel may administer oaths, take testimony and subpoena witnesses and the production of books, papers and documents. Subpoenas may be issued by any panel member. When a person fails to obey a subpoena, any court of record of this state, upon application by the panel, may order compliance with the subpoena and may punish further failure to obey as contempt.

(3) HEARINGS. The panel shall hold hearings at such times and places as it may determine, upon reasonable notice to the parties to the agreement, all of whom may be heard, present evidence and examine and cross−examine witnesses.

(4) MAJORITY VOTE. Except when issuing subpoenas, all questions arising in the course of the proceedings shall be determined by majority vote of the panel.

(5) DETERMINATION OF RESIDENCE. The panel, by majority vote, shall determine the residence of the decedent on the date of the decedent's death. This determination shall be final only for purposes of imposing and collecting death taxes.

(6) FILING OF DOCUMENTS. The panel shall file with each party to the agreement in sub. (1) and with the circuit court having jurisdiction under s. 72.27 a certified copy of:

(a) The agreement;

(b) The record of the panel's proceedings; and

(c) The panel's determination.

(7) COMPROMISE BY PARTIES. The department may at any time enter into a written agreement to settle the controversy made under sub. (1) fixing the amounts to be accepted by the parties in full satisfaction of death taxes.

(8) COMPENSATION AND EXPENSES. Compensation and expenses of members of the panel and its employees shall be agreed upon among the members and the personal representative, special administrator or trustee. If they cannot agree, compensation and expenses shall be fixed by the court which has or would have probate jurisdiction in the state determined by the board to be the residence of decedent. The amounts agreed upon or fixed shall be an administration expense and shall be payable out of property transferred.

(9) DEFINITION. In this section, "state" means any state, territory, district or possession of the United States.

History: 1971 c. 310; 1977 c. 449 s. 497; 1987 a. 403; 1995 a. 225.

72.36 Sunset. The tax imposed under this chapter does not apply to deaths occurring after December 31, 2012, unless the federal estate tax law is modified to provide a federal estate tax credit for state death taxes.

History: 2013 a. 20.