

CHAPTER 72

INHERITANCE, ESTATE AND GIFT TAX

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SUBCHAPTER I

GENERAL PROVISIONS

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.

(3) "Child" includes a legally adopted child and a mutually acknowledged child.

(4) "County court" means the county court which has jurisdiction under s. 72.27.

(5) "District attorney" means the district attorney of the county whose county court 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.

(10) "Donor", "donee" and "person" include all partnerships, associations, corporations and municipalities.

(11) "Estate" means all property of a decedent transferred to distributees by reason of his death.

(12) A "gift" is a completed transfer when the donor has divested himself of all beneficial interest in the property transferred and has no power to revest any interest in that property in himself or his estate.

(13) "The intestate laws of this state" include a surviving spouse's right to dower, 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 dower or other statutory rights.

(14) "Municipality" means a county, city, town, village, school district, regional planning commission, or any public agency thereof.

(15) "Mutually acknowledged child" is a person to whom a decedent or donor stood in a mutually acknowledged relationship of a parent commencing prior to the child's 16th birthday and continuing for a minimum of 5 years, or a shorter period only if that shorter period immediately preceded the decedent's death.

(16) "Personal representative" means any person to whom letters to administer a

decendent's estate have been granted by the court but does not include a special administrator.

(17) "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 spouse, lineal issue, lineal ancestor, wife or widow of a son, or husband or widower of a daughter of the creator of the power and to distributees specified in s. 72.15 (1). The exception does not include any transfer made under a power of appointment to the extent that the power is validly exercised by creating another power of appointment. In this definition, "lineal issue" includes adopted and mutually acknowledged children.

(18) "Probate court" means the probate branch of the county court or the county court exercising its probate jurisdiction under s. 253.10.

(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.

Legislative Council Note, 1971: Subs. (1), (9), (16) and (18) are new to this chapter but are similar to ss. 851.01, 851.07, 851.23 and 851.25, respectively.

Sub. (2) is new and occasioned by the changes in the administrative procedure in determining the inheritance tax.

Subs. (5), (7), (11), (12), (13), (19), (20) and (21) redefine terms currently treated in ss. 72.24 and 72.81 (11) sentence 1.

Subs. (3) and (6) are new to this chapter and introduced as a drafting tool. Sub. (6) is useful in stating reciprocity sections with precision and clarity. Sub. (8) is also a drafting device to cut down on repetition.

Sub. (10) combines ss. 990.01 (26) and 72.81 (11) sentence 2.

Sub. (14) is new to this chapter as a word of art and is useful in clarifying the intention of the legislature in its tax approach to such units within this chapter.

Sub. (15) combines for definitional purposes portions of ss. 72.02 (1) and 72.77 (1). The age prior to which the relationship must commence is changed from 15 to 16 and the period during which the relationship must continue is changed from 10 years to 5 years or a shorter period if that shorter period immediately preceded decedent's death.

Sub. (17) combines the definitions of ss. 72.01 (5) and 72.75 (3) and expands the enumerated, limited class to conform the definitions for inheritance and gift tax treatment. This subsection extends the limited class of s. 72.01 (5) to include a lineal ancestor and widower of a daughter of the creator and groups specified in s. 72.15 (1) to (3) herein. It extends the limited class of s. 72.75 (3) to include a lineal ancestor, wife or widow of a son, or husband or widower of a daughter of the creator and groups specified in s. 72.15 (1) to (3) [Bill 471-S]

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.

72.05 Rules and forms. The department may make rules and prescribe forms required to

compute, assess and collect taxes imposed by this chapter.

History: 1971 c. 310.

Legislative Council Note, 1971: This section gives the department the general power to make rules to carry out the intent of this chapter which it has now only in relation to estate tax. (Cf., s. 72.57) It also permits the department to prescribe the contents of necessary forms. This permits the elimination of various provisions on the subject to this effect scattered throughout the chapter. [Bill 471-S]

72.07 Status of adopted persons. For purposes of this chapter, the relationship between a legally adopted person and any person is governed by s. 851.51.

History: 1971 c. 310.

Legislative Council Note, 1971: The purpose of this section is to clarify that the relationship of an adopted person to a decedent, donor or other person causing a transfer taxable under this chapter is to be governed by s. 851.51 and to be treated the same as the relationship to the decedent of a naturally born person of the same degree of kinship under s. 852.03 (2). For example, if a decedent or donor had 2 brothers, one naturally born and the other legally adopted by decedent's or donor's parents, both persons are deemed "brothers" for purposes of this chapter. [Bill 471-S]

SUBCHAPTER II

INHERITANCE TAX

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 his death.

(2) EXCEPTION; RECIPROCITY AS TO NONRESIDENT DECEDENTS. A transfer, which is made taxable under this subchapter and is of a nonresident decedent's intangible personal property is not subject to the tax imposed by this subchapter 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. This subsection does not apply unless a tax is imposed on the transfer of the decedent's property by the laws of the state, territory or district of the decedent's residence.

History: 1971 c. 307, 310; 1973 c. 90.

Legislative Council Note, 1971: This section is of the same general substance as s. 72.01 (1), (2) and (9), respectively. Sub. (1) (a) should be read in connection with s. 72.14 (3) of this draft pertaining to the taxation of transfers of certain property of a resident which is located outside of this state. [Bill 471-S]

The new inheritance, estate and gift tax law. Boykoff, 56 MLR 453.

1973 changes in the inheritance and gift tax laws. Boykoff, 1973 WBB No. 5.

72.12 Transfers liable. A tax is imposed upon any transfer to any distributee in the following cases:

(1) **TRANSFER BY WILL.** When the transfer is by a will.

(2) **TRANSFER UNDER INTESTATE LAWS.** When the transfer is under the intestate laws of this state or of any other jurisdiction.

(3) **TRANSFER OF ALLOWANCES TO SURVIVING SPOUSE AND FAMILY.** When the transfer is made under subch. II of ch. 861, to the extent not subject to income tax.

(4) **TRANSFER IN CONTEMPLATION OF DEATH OR TO TAKE EFFECT AFTER DEATH.** (a) *Transfer in contemplation of death.* When the transfer is made in contemplation of the death of the transferor. Every transfer of property composing a material part of the transferor's estate, made within 2 years prior to the death of the transferor or in the nature of a final disposition or distribution, and without adequate and full consideration in money or money's worth, shall be deemed made in contemplation of death within the meaning of this subchapter, unless shown to the contrary.

(b) *Transfer to take effect after death.* When a transfer is made without adequate and full consideration in money or money's worth and is intended to take effect in possession or enjoyment at or after the death of the transferor, 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 from, 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 the transfer or to designate the beneficiary who shall possess or enjoy the property, or the income, or economic benefit from it.

(c) *Death benefits.* 1. Benefits paid to a beneficiary under an employe benefit plan are taxable under this subchapter except to the extent that the proportionate share resulting from the employer's contribution would be excludable from the gross estate of the decedent under s. 2039 of the 1954 internal revenue code as amended. This subsection applies whether or not there is a requirement for filing a federal estate tax return.

2. No tax is imposed by this chapter upon the transfer of benefits or any right or interest in benefits payable to a decedent's estate or distributee under:

a. Any employe retirement plan of the United States, state of Wisconsin or Wisconsin municipality; or

b. Any social security lump sum death benefit payable to a decedent's surviving spouse under 42 U.S.C. s. 402 (i).

(5) **TRANSFER UNDER POWER OF APPOINTMENT.** (a) *Rule.* When any person does any of the following with respect to a power of appointment derived from any disposition of property:

1. Exercises; or
2. Omits or fails to exercise; or
3. Releases; or
4. Creates another power of appointment.

(b) *Effect of conditions precedent.* For purposes of this subsection, the power of appointment is considered to exist on the date of decedent's death even though the exercise of the power is subject to a precedent giving of notice or takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

(c) *Transfer by omission or failure to exercise.* The omission or failure to exercise a power of appointment during any calendar year, other than the year of the donee's death, shall not be a transfer except to the extent by which the clear market value of the property that could have been appointed by the exercise of the power exceeds in value, at the time of the omission or failure to exercise, the greater of \$5,000 or 5% of the aggregate clear market value of the property out of which the exercise of the power could have been satisfied.

(6) **SURVIVORSHIP INTERESTS.** (a) *General provision.* When property is held in the names of 2 or more persons with the right of survivorship but not as tenants in common. Upon the death of one joint tenant, the right of the surviving joint tenant or tenants to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under this subchapter at the property's clear market value.

(b) *Joint tenancy exemption.* When property is held in the names of 2 or more persons with the right of survivorship, the following shall be subtracted as provided in par. (c):

1. The fractional interest of the survivor or survivors in property in an amount determined by dividing the property's clear market value by the number of joint tenants, including the decedent, except as provided in subd. 2.

2. Money which is invested or deposited in a financial organization, as defined in s. 71.07 (2)

(d) 1, and the clear market value of property which is acquired or placed in the names of 2 or more persons with the right of survivorship if the establishment of such survivorship interest is not subject to gift tax under subch. IV because it is an incomplete transfer, upon the death of one such person, an amount equal to the property's clear market value multiplied by a fraction, the numerator of which is the money or money's worth contributed by the surviving tenant or

tenants and the denominator of which is the money or money's worth contributed by all joint tenants including the decedent.

(c) *Application of exemption.* The amount determined in par. (b) 2 shall be subtracted from the amount determined under par. (a) prior to application of the tax rates under s. 72.18. The amount determined in par. (b) 1 shall be added to the exemption allowed under s. 72.17 (1) to (3) and shall be applied to the lowest tax bracket or brackets under s. 72.18. The remaining tax rates shall then be applied to the balance of property, the transfer of which is taxable under this subchapter, beginning at the tax rate applicable to the bracket in which the exemptions end.

Note: Chapter 222, laws of 1975, which repealed and recreated sub. (6), provided that the new provision is effective to all transfers because of deaths which occur on or after July 1, 1976.

(7) INSURANCE. (a) *Rule.* When insurance, except insurance returnable for income taxation and insurance under s. 72.13 (2), is payable upon the death of any person and any of the legal incidents of ownership remain in that person at the time of his death. Such transfer shall be taxable to the person entitled thereto, irrespective of the source of the premium payments. In this subsection "legal incidents of ownership" in an insurance policy means the right of the insured or his estate to its economic benefits or the power of the insured to change the beneficiary, to surrender or cancel the policy, to assign it, to revoke an assignment, to pledge the policy for a loan or to obtain from the insurer a loan against the policy's surrender value.

(b) *Exception.* Insurance up to a clear value of \$10,000, otherwise taxable under par. (a) and payable to a distributee and not the estate of the insured, shall not constitute a transfer taxable under this subchapter. This exemption shall be in addition to all other exemptions and allowances. For purposes of this subsection only, a funded, lump sum death benefit payable under a plan established prior to decedent's death by his employer or labor organization or both, or an "employee welfare benefit plan" or "employee pension benefit plan" as defined in 29 U.S.C. s. 302, as amended, and paid to a distributee and not the estate of the decedent shall be deemed "insurance." Nothing in this subsection shall impose a tax on a transfer exempt under sub. (4) (c). Each distributee of insurance, other than the estate of the insured, is 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 distributees.

(c) *Definition.* In this subsection, "distributee" shall include "trustee"

History: 1971 c. 310; 1973 c. 90; 1975 c. 222, 331.

Legislative Council Note, 1971: Subs. (1) and (2) restate parts of s. 72.01 (1) and (2), respectively.

Sub. (3) is new and is a clarification of the treatment of the taxation of allowances to a surviving spouse and family of a decedent.

Sub. (4) (a) and (b) are substantially the same as s. 72.01 (3) (a) and (b). The changes here are the substitution of words as newly defined in s. 72.01.

Sub. (4) (c) collects several provisions pertaining to the taxability of employee benefit plans. Sub. (4) (c) 1 is a restatement of s. 72.01 (3) (c) sentences 1 and 3. Sub. (4) (c) 2, a restates and clarifies ss. 72.01 (3) (c) sentence 2 and 72.04 (6). Sub. (4) (c) 2 b is added to codify what has been administrative practice.

Sub. (5) involves a restatement of s. 72.01 (5) of the statutes which brings the subject matter's treatment in line with the federal treatment, as represented in Internal Revenue Codes, 2041.

Sub. (5) (c) codifies administrative procedure and parallels the subject's treatment in internal revenue code s. 2041 (b) (2). Renunciation of a power of appointment is covered in s. 72.15 (5).

Sub. (6) is patterned after s. 291.01 subdivision 4 (1), Minn. Stats. and I. R. C. s. 2040 to tax the transfer of jointly held property in the same manner as the federal method.

Sub. (7) is essentially a restatement of s. 72.01 (7). The last 2 sentences of par. (b) 1, however, are new. The language makes certain lump sum death benefits eligible for the \$10,000 insurance exemption because these benefits have basic similarities to funded insurance. [Bill 471-S]

Under 72.01 (5), Stats. 1969, a taxable transfer was effected where a Wisconsin resident died possessed of a power of appointment over intangible assets of an irrevocable trust administered in Illinois by an Illinois trustee, which power she limited voluntarily in her lifetime during which she received one half of the income of the trust as beneficiary but without electing to exercise her self-limited power thereby caused the trust assets to be distributed to her children according to the settlor's plan in such event. Estate of Mueller, 47 W (2d) 336, 177 NW (2d) 60.

Where testator created a marital trust for his wife and a residuary trust for his children, any intention that the tax on both trusts be paid by the residuary must be expressed in clear language and cannot be left to implication. Estate of Bauknecht, 49 W (2d) 392, 182 NW (2d) 238.

Joint bank accounts in Wisconsin. O'Flaherty, 53 MLR 118.

Nature of cotenancies and their taxation—death and gift. Sheedy, Sullivan, 56 MLR 3.

72.13 Imposition of tax. (1) The tax is imposed at the prescribed rates upon the transfer of property measured by its clear market value on the date of decedent's death less enforceable liens and the deductions and exemptions provided in this subchapter. In determining the taxable value of property transferred, a deduction is allowed for the amount of an enforceable lien on the property if the distributee takes the property subject to that lien.

(2) A lien which is wholly or partially satisfied by payment directly to the creditor of proceeds of an insurance policy on the decedent's life is reduced by the amount of the proceeds.

History: 1971 c. 310.

Legislative Council Note, 1971: Sentence 1 is like s. 72.01 (8). While sentence 2 and sub. (2) are new to this subchapter, they clarify these points in accordance with s. 863.13. [Bill 471-S]

72.14 Deductions. (1) EXPENDITURES BY A PERSONAL REPRESENTATIVE, SPECIAL ADMINISTRATOR OR CERTAIN DISTRIBUTEES OUT OF

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CERTAIN ASSETS IN HIS POSSESSION. Deductions for the following expenditures made by the personal representative or special administrator out of the assets of the decedent in his possession or advanced or paid by a distributee of any assets in his possession are allowed:

(a) Debts of the decedent, including medical expenses and expenses of last illness to the extent not claimed for income tax purposes.

(b) Reasonable funeral and burial expenses.

(c) Expenses of administration to the extent not claimed for income tax purposes.

(d) If known, real estate taxes accrued during the year of the decedent's death, or if such taxes are not known, an amount equal to one-twelfth of the taxes assessed against the land for the preceding calendar year multiplied by the number of months in the calendar year which elapsed prior to the date of death, including the month of death if the death occurred after the 15th day. Deductions allowed under this paragraph shall be considered a lien against the subject real estate reducing its market value.

(e) The estate tax as finally determined by the U. S. government on property subject to tax under this subchapter, to the extent that the federal tax is computed on the clear market value of the same property for state inheritance tax purposes.

(2) EXPENDITURES BY CERTAIN DISTRIBUTEES OUT OF CERTAIN TAXABLE ASSETS IN THEIR POSSESSION. Deductions for the expenses in sub. (1), to the extent not claimed for income tax purposes, paid by a distributee, trustee or other person out of taxable assets not in the possession of a personal representative or special administrator, are allowed to the extent that assets in the possession of a personal representative or special administrator are not sufficient to pay them or to the extent that the distributee, trustee or other person is obligated to pay, or other assets are subject to the payment of, such expenses.

(3) WHEN ONLY PART OF TOTAL ASSETS ARE WITHIN THIS STATE. Whenever an estate is partly within and partly without this state, only deductions allowed under sub. (1) equal to the proportion which the property within this state bears to the entire estate may be deducted. A distributee is entitled only to that proportion of his Wisconsin exemption equal to the proportion which his interest in the property within this state bears to his entire interest in the estate.

History: 1971 c. 310; 1975 c. 331.

Legislative Council Note, 1971: This section is a departure from current statutory provisions on deductions in that it permits deductions for amounts advanced or paid by certain distributees and from property which is not subject to administration.

Sub. (1) is similar to s. 72.015. The new section permits deductions for amounts paid or advanced by certain

distributees, codifying existing practice. This section should be read in connection with ch. 859. Sub. (1) (b) adds "funeral" expenses to clarify that costs of cremation are included. Sub. (1) (d) is new and uses a proration formula like that in s. 74.62 (1) of the statutes. Sub. (1) (e) is like s. 72.015 (5).

Sub. (2) is new and permits certain deductions out of nonprobate property.

Sub. (3) is similar to s. 72.045 (5). [Bill 471-S]

72.15 Transfers exempted from this tax; reciprocity in exemptions. (1) (a) All transfers to the following are exempt from the tax imposed by this subchapter:

1. The United States or any state or political subdivision thereof strictly for a public purpose;

2. Corporations, trusts, voluntary associations or foundations organized and operated exclusively for religious, humane, charitable, scientific or educational purposes;

3. Any corporation, organization, association or foundation in trust for the direct financial benefit of any municipality;

4. Any national organization of veterans of the U.S. armed forces or a subordinate unit thereof;

5. Banks or trust companies of this state, or to individuals residing in this state, or to fraternal societies organized under ch. 188, as trustees, in trust exclusively for the purposes specified in subs. 1 and 2.

(b) The exemptions granted in par. (a) extend to transfers to organizations located in or organized or established under the laws of any other state, territory or district, exclusively for purposes specified in par. (a) 1 and 2, including institutions maintained by the state, territory or district itself, if the law of that political unit on the date of the decedent's death granted a like and equal exemption to similar transfers by its residents to or for the use of an organization of similar character and purpose operating principally in this state.

(2) No tax is imposed upon the transfer of any real property or tangible personal property of a resident decedent when the property is located outside the jurisdiction of this state and when a state death tax in the state where located has actually been paid. Such tangible personal property must not be outside the jurisdiction of this state temporarily nor for the sole purpose of deposit or safekeeping.

(3) In the event of a renunciation under s. 852.13, 853.21 or 853.23, the transfer from the decedent shall be taxed to the distributee taking as a result of the renunciation.

History: 1971 c. 310; 1975 c. 331.

Cross Reference: See 613.81 for exemption of transfers to hospital service insurance corporations.

Legislative Council Note, 1971: Subs. (1) and (2) are a clarification and restatement of s. 72.04 (1) to (4). Sub. (3) collects several provisions on the tax treatment of renunciation. [Bill 471-S]

72.16 Classification of distributees. In determining the amount of tax due under this subchapter, distributees are classified as follows:

(1) Class A consists of distributees in the following relationships to the decedent: surviving spouse, lineal issue, lineal ancestor, wife or widow of a son, or husband or widower of a daughter. For the purpose of this classification, a mutually acknowledged child, his spouse and issue, shall be treated the same as a natural child, its spouse and issue.

(2) Class B consists of distributees in the following relationships to the decedent: brother, sister or a descendant of the brother or sister.

(3) Class C consists of distributees in the following relationships to the decedent: brother or sister of the father or mother, or a descendant of the brother or sister of the father or mother.

(4) Class D consists of all distributees in any other degree of collateral consanguinity to the decedent than stated above, strangers in blood and other persons.

History: 1971 c 310.

Legislative Council Note, 1971: This is a new approach to the classification of distributees, currently treated in s. 72.02. Classes A and B separate distributees which are presently grouped together in s. 72.02 (1) for the purpose of imposing the tax rate. Reference to adopted persons is not necessary here because of the addition of s. 72.07 [Bill 471-S]

72.17 Exemptions from the first \$50,000.

Exemptions from the tax, to be applied against the first \$25,000 and then, where an additional amount is permitted, against the next \$25,000, are allowed as follows:

(1) To a surviving spouse, property of a clear market value of \$50,000; to all other class A distributees, property of a clear market value of \$4,000;

(2) To class B and class C distributees, property of a clear market value of \$1,000; and

(3) To class D distributees, property of a clear market value of \$500.

(4) In addition to the exemptions allowed by subs. (1) to (3):

(a) For the care and maintenance of the burial lot of the deceased, property of a clear market value of \$500.

(b) To the cemetery in which the deceased is buried, property of a clear market value of \$500.

(c) For the performance of a religious purpose or service for or in behalf of the deceased or for or in behalf of any person named in his will, property of a clear market value of \$1,000.

History: 1971 c 310

Legislative Council Note, 1971: The exemptions for each group of distributees is increased from the exemptions in s. 72.045 (1) to (4). This section's changes, together with s. 72.12 (6), the new method of taxing joint property represent the 2 changes of the most significant fiscal impact in the substantive portions of the inheritance tax subchapter.

Sub. (1) increases the surviving spouse's exemption from \$15,000 for a widow and \$5,000 for a widower. As in the probate code, the distinction between surviving spouses by sex is eliminated and widows and widowers are treated equally.

The exemption to the remaining class A distributees is increased from \$2,000 to \$4,000. The possibility of differentiating between exemptions given adult and minor lineal issue was discussed, but no such recommendation is made.

Sub. (2) increases the exemption for class B distributees, also privileged under s. 72.045 (1), from \$500 to \$1,000. It also increases the exemption of class C distributees from \$250 (s. 72.045 (2)) to \$1,000.

Sub. (3) increases the exemption from \$100 (s. 72.045 (3)) to \$500.

S. 72.14 (3) pertains to the exemption allowed when only part of the total assets are within this state [Bill 471-S]

72.18 Rates. When property is transferred by reason of a death to or for the use of a distributee, a tax is imposed at the following rates:

(1) A surviving spouse is taxed upon the balance, if any, of the first \$25,000 over the exemption at 1.25%; upon property which exceeds \$25,000 and does not exceed \$50,000 at 2.5%; upon property which exceeds \$50,000 and does not exceed \$100,000 at 3.75%; upon property which exceeds \$100,000 and does not exceed \$500,000 at 5% and upon property which exceeds \$500,000 at 6.25%. All other class A distributees are taxed upon the balance, if any, of the first \$25,000 over the exemption at 2.5%; upon nonexempt property which exceeds \$25,000 and does not exceed \$50,000, at 5%; upon property which exceeds \$50,000 and does not exceed \$100,000, at 7.5%; upon property which exceeds \$100,000 and does not exceed \$500,000, at 10%; and upon property which exceeds \$500,000, at 12.5%. The personal exemption applies against the lowest bracket.

(2) Class B distributees are taxed upon the balance of the first \$25,000 over the exemption at 5%; upon property which exceeds \$25,000 and does not exceed \$50,000, at 10%; upon property which exceeds \$50,000 and does not exceed \$100,000, at 15%; upon property which exceeds \$100,000 and does not exceed \$500,000, at 20%; and upon property which exceeds \$500,000, at 25%.

(3) Class C distributees are taxed upon the balance of the first \$25,000 over the exemption at 7.5%; upon property which exceeds \$25,000 and does not exceed \$50,000, at 15%; upon property which exceeds \$50,000 and does not exceed \$100,000, at 22.5%; upon property which exceeds \$100,000, at 30%.

(4) Class D distributees are taxed upon the balance of the first \$25,000 over the exemption at 10%; upon property which exceeds \$25,000 and does not exceed \$50,000, at 20%; upon property which exceeds \$50,000, at 30%.

History: 1971 c 310; 1973 c 90

Legislative Council Note, 1971: This section imposes tax at a single rate upon transfers to each class of distributees. It consolidates the 4 rates of ch. 72: "primary rates" (s. 72.02), "other rates" (s. 72.03), "emergency tax" (s. 72.74) and early payment discount (s. 72.06)

Except for one instance, these new rates are below the effective, before-discount rates and are only slightly higher (by

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a few 100ths of a percent) than the after-discount effective rates.

Distributee class B represents the only groups which have their rate structure more significantly altered. These groups are distinguished from class A distributees (unlike in s 72.02 (1)) because persons they encompass are generally more remote in blood and affection from the decedent than class A distributees.

The progression of tax rates for classes E and D does not continue beyond 30% because the 20% limitation of s 72.19 would, in fact, negate the imposition of tax at a higher rate while leaving a false impression that amounts are taxes at those very high rates.

See new s. 72.07 and its explanatory note for the status of adopted persons. [Bill 471-S]

72.19 Rate limit. The tax imposed by this subchapter shall not exceed 20% of the clear market value of property transferred to any distributee.

History: 1971 c. 310.

Legislative Council Note, 1971: This changes s. 72.035 from 15% to take into account the merger of rates discussed in s. 72.18. [Bill 471-S]

72.20 Inheritance tax credit. (1) The child of a decedent shall be allowed a credit based on the tax paid by the decedent's surviving spouse, if:

(a) The surviving spouse received property from the decedent which was transferred by or from such surviving spouse to the child; and

(b) The surviving spouse survived the decedent for a period not exceeding 6 years.

(2) For purposes of this section, credit shall be computed as follows: that share of the estate received by the spouse reduced by the value of all life interests included in this share over the total value of the estate passed by the spouse increased by the value of all gifts by the spouse after the death of the decedent, times the children's share of the estate of the spouse over the total distributable value of the estate of the spouse, times the tax the child would pay on the estate of the spouse before the credit.

(3) The portion of the credit which is allowable is as follows:

(a) 100% if the surviving spouse died within 3 years immediately succeeding decedent's death;

(b) 75% if the surviving spouse died in the 4th year after decedent's death;

(c) 50% if the surviving spouse died in the 5th year after decedent's death; or

(d) 25% if the surviving spouse died in the 6th year after decedent's death.

(4) The credit allowed by this section shall not exceed the amount of tax paid by the surviving spouse on the transfer of property because of decedent's death. Where there is more than one child, the total credit allowable shall be apportioned among the children in the ratio of each child's tax before credit to the total tax of all the children before credit.

(5) In computing time under this section, decedent's date of death is excluded.

(6) A child of a deceased child of the decedent who takes by representation is entitled to the credit which would have been allowed to his deceased parent. Where there is more than one child, the total of credit allowed shall not exceed the amount which would have been allowed to their deceased parent.

History: 1971 c. 310.

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 subchapter, with interest, to the extent of the clear market value of all property under his control, the transfer of which is subject to this tax. This liability extends to all taxes due under this subchapter 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 subchapter, with interest, only to the extent of the clear market value of property transferred to him.

History: 1971 c. 310.

Legislative Council Note, 1971: This section clarifies the extent of personal liability for the tax which is contained in s. 72.05 sentence 1 after the semicolon. [Bill 471-S]

72.22 Payment. (1) **WHEN PAYABLE.** The tax imposed by this subchapter is due and payable at the time of the decedent's death.

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

(3) **PAYMENT.** Payments must be made to the department. Full payment shall accompany the inheritance tax return. 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.

Legislative Council Note, 1971: Sub (1) is similar in substance to that portion of ss. 72.05 (1) sentence 1 preceding the semicolon and 72.08 (3). Subs. (2) and (3) are similar to s. 72.05 (2) and (3). [Bill 471-S]

72.23 Interest. (1) **RATE.** If the tax imposed by this subchapter is not paid within one year of the decedent's date of death, interest is due and payable at the rate of 8% per year from date of death. In computing time under this section, the day of death is excluded.

(2) **INTEREST MAY BE WAIVED.** The department or county court may waive interest on any additional tax arising from the discovery of property which was omitted in the original determination of tax. This subsection applies

only where due diligence has been exercised in marshaling the assets.

History: 1971 c. 310; 1973 c. 90.

Legislative Council Note, 1971: Sub. (1) considers items treated by s. 72.06 after sentence 1 with several changes. The time within which the tax may be paid is reduced from 18 months to one year and a single rate of interest of 8% is imposed in lieu of the current 6% and 10% feature of s. 72.06. Reference in s. 72.06 to interest on the bond allowed by s. 72.09 is omitted as all references to that type of bond are repealed and not recreated.

Sub. (2) is like s. 72.065 in providing that interest may be waived on certain after-discovered property. Changes are made, however, to conform with the new administrative procedures [Bill 471-S].

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

History: 1971 c. 310; 1973 c. 90.

Legislative Council Note, 1971: This section summarizes the refunding provisions of s. 72.08. [Bill 471-S]

72.25 Release or transfer of lien. Until this tax is paid it is a lien upon the property transferred except:

(1) When the department is satisfied that collection of the tax will not be jeopardized, it may release this lien on all or part of real property. A duly executed release of the lien may be recorded with the register of deeds of the county in which the property is located. The recording fee shall be the same as for the recording of a mortgage satisfaction.

(2) The sale of any property the transfer of which is taxable under this subchapter by a personal representative, special administrator or trustee constitutes a release of the lien on that property. The lien is transferred to the sale's proceeds, the property passes free of that lien and the person to whom the property is sold has no liability for the tax.

History: 1971 c. 310; 1973 c. 90.

Legislative Council Note, 1971: This section restates basic concepts of ss. 72.05 (1) after sentence 1 and 72.05 (4) in newly defined terms and in accordance with newly established administrative procedures. The \$2 fee for a lien waiver is eliminated [Bill 471-S].

72.26 Bequest to a personal representative or trustee for services. If a decedent provides for a transfer to a personal representative or trustee in lieu of other compensation or makes him a distributee to an amount exceeding the maximum allowable compensation, the excess in value of the transfer above the maximum allowable compensation is a transfer taxable under this subchapter. This subsection does not authorize the deduction of trustees' fees incurred in the administration of a testamentary

trust; such fees are not deductible in determining the value of the net taxable transfer.

History: 1971 c. 310.

Legislative Council Note, 1971: This section restates s. 72.10. [Bill 471-S]

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

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

History: 1971 c. 310; 1973 c. 90.

Legislative Council Note, 1971: This section is of the same general substance as s. 72.12 (1) and (3). [Bill 471-S]

72.28 Valuation. (1) **STANDARDS.** (a) **Homestead.** Where a homestead consists of a single-family dwelling or a duplex, the equalized assessed valuation may be used and appraisal dispensed with, unless any interested party or the department requests an appraisal.

(b) **Securities.** When a decedent leaves any securities issued by a business organization, owning property or doing business in this state or leaves any interest therein or in the assets thereof, all inventories, books, papers, income tax returns and records thereof are competent evidence, and shall be made accessible to the personal representative, special administrator, appraiser, department or referee designated by the court, to ascertain the true value of such securities or interests. The court may order any inventories, books, papers and records to be produced in court, and may require the attendance and examination in court of any officer or employe of any such business organization. In this paragraph: "business organization" means corporation, joint stock company, partnership and association; "securities" includes stocks and bonds.

(c) **Future or limited estates.** 1. Method of valuation. a. Determination of the value of every future or limited estate, income, interest or

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annuity dependent upon any life or lives in being shall be based on tables designated by the department. These tables shall be those used by the internal revenue service for like computations.

b. If valuation cannot be established under subd. 1. a, the commissioner of insurance, upon application of the department or county court, shall determine the value. The commissioner's report shall be presumptive evidence that his method of computation is correct.

2. Payment. The tax, based on the value determined by subd. 1, is upon a transfer of a proportion of the principal or corpus of the estate equal to its present value and not upon any income of that property produced after death, which income shall be subject to the income tax. The tax imposed by this subchapter is due and payable out of the property transferred without right of recoupment from the life tenant.

(d) *Estate for life or years.* Where an estate for life or years can be divested by the act or omission of the distributee, it shall be valued as if there were no possibility of such divesting, subject to renunciation under s. 852.13, 853.21 or 853.23.

(e) *Power of appointment.* 1. General power. A transfer of an estate for life or years or of a beneficial interest in property accompanied by a power of appointment, as defined in s. 72.01 (17), over the remainder is taxed to the life or term tenant or transferee of the beneficial interest as the transfer of absolute ownership.

2. Other power. If the power is excluded from the definition of a power of appointment, then the remainder interest subject to the power is 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 a manner that will result in the imposition of the largest amount of tax. Upon the exercise, failure to exercise or release of a 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, be refunded with interest at the legal rate to the payor or other person entitled thereto.

(2) **COMPOSITION AGREEMENTS.** (a) The department may enter into an agreement with the personal representative, special administrator, trustee or distributee of any property where:

1. Remainders, expectant estates or powers of appointment are of such a nature that the tax on their transfer is not ascertainable under this chapter; or

2. The interest of a distributee or trust beneficiary is not ascertainable under this subchapter; or

3. A tax is claimed on the transfer of property of a nonresident decedent.

(b) The department may enter such an agreement upon terms deemed equitable and expedient and may grant releases of personal liability to the personal representative, special administrator, trustee or distributee upon payment of the tax. Any agreement made under this section shall be executed in triplicate, to be distributed as follows: one copy filed with the department; one copy with the county court; and one copy to the personal representative, special administrator, trustee or distributee who is a party thereto.

History: 1971 c. 310; 1973 c. 90.

Legislative Council Note, 1971: In 1903, when many of the valuation provisions currently in s. 72.15 were first enacted, they were drafted in anticipation of a tax collection system permitting the deferment of tax payment. Ten years later, when the system was revised to provide for the more prompt closing of estates, the earlier language was not removed. In this context, s. 72.15 (6), (7), (8) and (9) except its last sentence are repealed and not recreated. Additionally, changes made in this section are to account for terms as newly defined and for the new administrative procedures.

Sub. (1) (a) is new. Sub. (1) (b) contains the same basic substance as s. 72.11 (8).

Sub. (1) (c) combines and restates basic concepts of s. 72.15 (4) and (5). The last 8 words of sub. (1) (c) 2 clarify the statute in accordance with the Estate of Allen (1943), 243 Wis. 44, 99 N.W. (2d) 102.

Sub. (1) (d) retains the idea from the last sentence of s. 72.15 (9).

Sub. (1) (e) restates s. 72.15 (8m) and adds that where an excess tax is collected and refunded, the excess will be returned with interest at the legal rate.

Sub. (2) is a restatement of s. 72.21. In it, the department is given the additional authority to enter into a composition agreement with respect to powers of appointment. Also, a person entering a composition agreement on behalf of a trust is no longer required to have the written consent of each trust beneficiary [Bill 471-S].

72.29 Assets of decedents. (1) **ASSETS OF NONRESIDENT DECEDENTS.** (a) Persons in this state in possession, custody or control of intangible personal property of a nonresident decedent who, on the date of his death, was a resident of a state which imposes a death tax, may transfer the property upon receipt of an affidavit evidencing the decedent's residency. The transfer constitutes a release of any lien under subchs. II and III.

(b) Persons in this state having possession, custody or control of tangible personal property of a decedent who, on the date of his death, was not a resident of this state, or of intangible personal property of a decedent who, on the date of his death, was a resident of a state which does not impose a death tax or of a foreign country, may transfer such property only after:

1. Retaining a sufficient portion to pay any tax, interest and penalty, imposed under subchs. II and III; or

2. Obtaining the written consent of the department. Whenever the department is satisfied that the collection of any tax on a transfer will not be jeopardized, it may issue a certificate consenting to the transfer upon the advance payment of \$1.

(2) ASSETS OF RESIDENT DECEDENTS. Persons in this state in possession, custody or control of any property of a decedent who, on the date of his death, was a resident of this state, may:

(a) Transfer the property to a personal representative, special administrator, trustee, or an heir under s. 867.03 and the transfer constitutes a release of any liability under subchs. II and III.

(b) Transfer the property to any other person only after:

1. Retaining a sufficient portion to pay any tax, interest and penalty imposed under subchs. II and III; or

2. Obtaining the written consent of the department. Whenever the department is satisfied that collection of any tax on a transfer will not be jeopardized, it may issue a certificate consenting to the transfer upon the advance payment of \$1.

(3) EXCEPTION. This section does not apply to any property of a partnership.

(4) PENALTY. Whoever violates any provision of this section shall be liable for the tax, interest and penalty imposed by subchs. II and III.

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

History: 1971 c. 310.

Legislative Council Note, 1971: This section codifies current administrative practice and incorporates the substance of s. 72.11 (2) and (3). It applies to the contents of safe deposit boxes as well as other assets. [Bill 471-S]

72.30 Determination of tax. (1) **TAX DETERMINATION.** The personal representative, special administrator, trustee, distributee or other person interested shall prepare the inheritance tax return, compute the tax, if any, due under this subchapter and file the original with the department.

(2) NOTICE TO DISTRIBUTEES AND TRUSTEES. Not more than 10 days after filing the tax return under sub. (1), the personal representative, special administrator or trustee shall mail or deliver to each distributee and trustee of a transfer taxable under this subchapter a copy of the return or a statement containing the following:

(a) The date on which the return was filed;

(b) A list of all property received by that distributee;

(c) A summary of the value of each item listed in par. (b); and

(d) The total tax resulting from the transfer of all items listed in par. (b).

(3) CERTIFICATE DETERMINING VALUE OF PROPERTY AND LIABILITY FOR TAX. (a) In making its determination of tax due under this subchapter, the department may require information regarding the methods of valuation used, including those under s. 72.28.

(b) Where the department and any interested person are unable to agree on any issue necessary for the determination of tax under this subchapter, either may petition the county court to decide the issue.

(c) Upon determination of the value of the property and the tax, the department shall issue a dated certificate showing the amount of tax and any interest and penalty.

(d) A copy of this certificate shall be retained by the department and the original shall be sent to the person filing the return.

(e) No county court proceeding held for the transfer of property of a decedent shall be completed until the original certificate determining the tax or determining no tax, together with proof that any tax has been paid, shall be filed with the court.

(4) HEARING IN COUNTY COURT. The attorney general, department, district attorney or any person dissatisfied with the appraisal, assessment or determination of the tax due under this subchapter may apply for a hearing before the county court within 6 months from the date the certificate in sub. (3) (c) is issued. The applicant must file a written notice with 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.

(5) PETITION FOR ANCILLARY PROBATE OR ANCILLARY ADMINISTRATION. Every petition for ancillary probate or ancillary administration shall include a true statement of all the decedent's property in this state and its value. Upon presentation of the petition, the county court shall order the personal representative, special administrator, trustee or distributee to proceed under subs. (1) and (2).

(6) DETERMINATIONS PRIOR TO 1947. Where 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, the determination is conclusive with respect to the property which was before the court whether or not the required notice of hearing to determine the tax was given properly.

(7) COLLECTION. In addition to its powers to collect taxes due under this subchapter, the

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department may proceed in the manner provided in s. 71.13 (3).

History: 1971 c. 310; 1973 c. 90; 1975 c. 41 s. 52; 1975 c. 331.

Legislative Council Note, 1971: This new administrative procedure removes the necessity of court participation in undisputed tax determinations. It provides for self-assessment much like with the filing of income tax returns. The court will be available, however, to resolve disputed issues.

Under sub. (1), the legal representative of an estate or a distributee may compute the tax, fill out the tax return and mail it to the department of revenue. Copies must be filed with the public administrator and with the county court if there is property subject to administration.

Sub. (2) is also new. It parallels the new probate code's concern that persons interested should receive notice of proceedings affecting their interests. Information concerning each distributee's taxable property must be sent to him within 10 days after filing of the tax return.

Sub. (3) provides that the department shall determine the amount of and liability for the tax and shall issue a certificate containing its determinations. This replaces the need of a hearing in county court for all determinations (cf. s. 72.15 (2) (a)) and the county court order (s. 72.15 (10)).

Under sub. (4), any interested person dissatisfied with an issue of fact or law has recourse to the county court within 6 months from issuance of the closing certificate. The subsection clarifies that no statute of limitations shall run against the department in instances of fraud or collusion or where property was not disclosed in the return.

Sub. (5) is a restatement of s. 72.12 (2).

Sub. (6) is of the same substance as s. 72.15 (2) (b).

Sub. (7) restates s. 72.16 (2).

Appraisers may be appointed under ss. 858.13 and 858.15. The "special appraiser" of ss. 72.13, 72.14, 72.15 (1) and elsewhere in ch. 72 is eliminated, as is the "additional appraiser" of s. 72.15 (3). [Bill 471-S]

72.31 Special administration. (1) WHEN EXERCISED. When no administration proceeding has been commenced or no complete tax return has been filed, any person, including the department, interested in the property, the transfer of which is subject to tax under subchs. II and III, may petition for appointment of a special administrator with powers to determine the tax, if:

(a) No petition for administration of property of a decedent is made within 60 days after decedent's death and the property's transfer appears to be taxable under subch. II or III;

(b) Administration has been completed without determining the tax;

(c) No tax is due and that fact has not been formally determined;

(d) A certificate of survivorship, heirship or assignment has been issued under s. 867.04, 867.05 or 868.05;

(e) Assets upon the transfer of which no tax has been paid are discovered; or

(f) Property was transferred in contemplation of the death of the transferor and no application for the adjustment or payment of the tax has been made within 60 days of the transferor's death.

(2) PROCEDURE. (a) Prior to acting under sub. (1) the special administrator shall, by certified mail, notify the distributee of the basis of his authority under sub. (1).

(b) If, within 60 days after receiving the notice, a distributee fails to institute the appropriate proceeding or file a tax return, the special administrator shall notify the department and institute such proceeding or file the return. After the department has been so notified, the department may file a notice of lien with the register of deeds or clerk of courts, specifying the property, the transfer of which is taxable under this subchapter, and the name of the distributee.

(c) Costs and expenses properly incurred by a special administrator shall be paid out of the subject property or by the distributee thereof.

History: 1971 c. 310; 1973 c. 90.

72.33 Adjustments. (1) If a federal estate tax return is filed for the transfer of property taxable under subch. II or III, the person filing the return required by s. 72.30 (1) shall attach a copy of the federal return, together with a copy of the closing letter, if available, and proof of payment.

(2) If the amount of the federal estate tax initially paid is subsequently increased or decreased and if this affects the amount of the allowable federal estate tax deduction under s. 72.14 (1) (e), or if the federal determination requires adjustments in Wisconsin distribution or the deductions allowable under s. 72.14 (1) (a) only for medical expenses and last illness under s. 72.14 (1) (c), the person entitled to the refund or liable for the additional tax under subch. II or III shall, within 30 days:

(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).

(4) No valuation or other substantive issue upon which the department has issued its certificate may be reopened more than 6 months after the date of the certificate except with the mutual consent of the department and taxpayer.

History: 1971 c. 310; 1975 c. 41 s. 52; 1975 c. 331.

Legislative Council Note, 1971: This section is new to the inheritance tax provisions of this chapter. It is a restatement, however, and extension of concepts found in ss. 72.55 and 72.59. [Bill 471-S]

72.34 Inheritance tax counsel; investigations. (1) The department shall supervise the administration of the tax imposed by this subchapter and shall investigate and cause to be investigated the administration of this tax and the transfers to which these laws apply. The

department shall make and file in its offices reports of such investigations and specific information and facts requiring special consideration by the department of justice. Whenever necessary, the department of revenue may employ accountants, appraisers or other special assistants including counsel in appraising or determining the value of property transferred.

(2) The department shall appoint an inheritance tax counsel who shall have charge of the inheritance tax work under the department's supervision and shall be provided with further assistance from the regular force of the department if necessary and expedient. The inheritance tax counsel shall devote his time to inheritance tax investigations and shall personally make such investigation at the county courts. He shall appear in the county courts when requested by the county court or department.

(3) In the conduct of inheritance tax affairs, the department and its inheritance tax counsel shall have the same and similar powers and authority for gathering information and making investigations as is conferred on the department in its performance of other duties.

(4) The department and its inheritance tax counsel shall also gather information and make investigations and reports concerning transfers of property of nonresident decedents taxable under this subchapter, and shall especially investigate the probate and other records for such probable transfers without the state and report thereon to the department of justice for appropriate legal action.

(5) The department of justice shall carry out and enforce the recommendations and directions of the department of revenue in all matters pertaining to tax collection under this subchapter. In every estate in which the amount of inheritance tax collectible exceeds or probably exceeds \$1,000, there shall be no compounding, composition or settlement of the taxes until the department of revenue or its inheritance tax counsel has investigated the estate and made a report thereon and the department consents to such compounding, compromise or settlement.

(6) (a) Every person, order or society transacting life, accident, fraternal, mutual benefit or death benefit insurance business within this state, 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 within 10 days from the date of such payment.

(b) Every person liable for paying benefits to the estate or a beneficiary of a deceased employe or former employe in the form of an annuity, bonus, pension or other benefit under a retirement, deferred compensation or profit-sharing plan taxable under this subchapter,

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 employe or former employe.

History: 1971 c 310; 1973 c 90

Legislative Council Note, 1971: This is a restatement of s. 72.18 [Bill 471-S]

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 his death, the department may make a written agreement with the other taxing authority and with the personal representative, special administrator or trustee, to a) settle the dispute, or b) 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 a) be heard; b) present evidence; and c) 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 his 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 county 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.

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(8) COMPENSATION AND EXPENSES. Compensation and expenses of members of the panel and its employes 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.

Legislative Council Note, 1971: This is an adaptation of the Uniform Act on Interstate Arbitration of Death Taxes and is new to this chapter. Similar legislation has been adopted in at least 13 states.

Where more than one state claims to be the decedent's residence, double taxation may result. This section provides for a system of voluntary arbitration between claimant states in the event of failure to compromise.

Such arbitration may occur only where the claimant states and the legal representative of the estate are willing. By sub. (5), the panel's finding as to residence is binding only for purposes of imposing and collecting death taxes, and not on other phases of administration.

Language from the Uniform Act has been deleted which would have made these provisions applicable only where claimant states have identical or substantially similar law. Such language might preclude the department of revenue's arbitrating with the taxing authority of a state which has authority to arbitrate tax disputes under a statute which might not qualify under the "identical or substantially similar" test. [Bill 471-S]

SUBCHAPTER III**ESTATE TAX**

72.60 Purpose. The purpose of this subchapter 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 additional tax. This subchapter is to be liberally construed to effect this purpose.

History: 1971 c. 310.

Legislative Council Note, 1971: This section contains the same substance as s. 72.56 [Bill 471-S]

72.61 Estate tax imposed. In addition to the tax imposed by subch. II, an estate tax is imposed upon the transfer of all property subject to a federal estate tax where the decedent at the time of his death was a resident of this state. The amount of this estate tax equals the excess, if any, of the credit allowable upon the federal estate tax, over the aggregate amount of all death taxes paid for transfers of property taxable because of decedent's death. This tax shall not exceed the extent to which its payment will effect a saving or diminution in the amount of the federal estate tax payable by or out of the estate

of the decedent had this subchapter not been enacted. The tax imposed shall be collected and accounted for by the department under s. 72.22. The full amount collected shall be paid to the state.

History: 1971 c. 310; 1973 c. 90

Legislative Council Note, 1971: This section contains the same substance as s. 72.50. [Bill 471-S]

72.62 Liability and lien. Liability for this tax is imposed upon the same persons in the same manner as under s. 72.21 and shall remain a lien in the same manner as under s. 72.25.

History: 1971 c. 310.

Legislative Council Note, 1971: This section parallels the treatment of these subjects with their treatment under the inheritance tax sections. [Bill 471-S]

72.63 When payable. The tax imposed by this subchapter is payable at the same time as the inheritance tax and shall bear interest at the same rate and in the manner provided under s. 72.23.

History: 1971 c. 310.

Legislative Council Note, 1971: This section amends s. 72.51 to make it parallel with the inheritance tax provisions. [Bill 471-S]

72.64 Other provisions applicable. Unless otherwise specifically covered in this subchapter, the provisions of subch. II shall apply if they are applicable and are not in conflict with the provisions of this subchapter.

History: 1971 c. 310.

Legislative Council Note, 1971: This section contains the same substance as s. 72.61. [Bill 471-S]

SUBCHAPTER IV**GIFT TAX**

72.75 Transfers taxable. (1) TRANSFERS BY RESIDENTS OR NONRESIDENTS. A tax is imposed upon any transfer to any person after July 9, 1933, when:

(a) *Residents.* The transfer is by gift from a donor who, at the date of the gift, was a resident of this state.

(b) *Nonresidents.* The transfer is by gift of property within the jurisdiction of this state and the donor was not a resident of this state on the date of the gift.

(2) TRANSFERS UNDER A POWER OF APPOINTMENT. Any transfer within the meaning of s. 72.12 (5), with respect to a power of appointment, which is not a transfer taxable under subch. II or III constitutes a transfer taxable under this subchapter. All sections of subch. II, relating to the tax on a transfer with respect to a power of appointment, shall apply to the tax imposed by this subchapter if they are

applicable to, not covered by and not in conflict with this subchapter.

History: 1971 c. 310.

Legislative Council Note, 1971: Sub. (1) contains the same substance as s. 72.75 (1) and (2). Sub. (2) alters s. 72.75 (3) to parallel the treatment of the taxation of a transfer with respect to a power of appointment to its treatment for inheritance tax purposes. [Bill 471-S]

The new inheritance, estate and gift tax law. Boykoff, 56 MLR 453.

72.76 General exemptions. (1) TRANSFERS EXEMPTED. No tax is imposed by this subchapter upon the transfer of property when:

(a) The transfer is taxable under subch. II or III or both.

(b) The transfer is of any real property or any tangible personal property of a resident donor when the property is located outside the jurisdiction of this state, unless the tangible personal property is outside the jurisdiction of this state temporarily or for the sole purpose of deposit or safekeeping.

(c) Property is transferred, paid, furnished or delivered by an employer to its employees, or to any organization of its employees, directly or indirectly, or to any person for them or it, to cover insurance, sickness and death benefits, pensions, relief activities, or to any other employees' benefit fund, and medical service to employees and their families.

(d) An employer transfers amounts to a former employee's distributee or estate, which amounts qualify as an employee death benefit taxable as income under the internal revenue code of 1954, as amended, or excludable from gross income under internal revenue code s. 101 (b).

(e) Reasonable amounts of property are transferred, paid, furnished or delivered by any person to anyone dependent upon him for support, when the property is transferred, paid, furnished or delivered for the current maintenance, support or education of the dependent.

(g) The transfer is payment to the department by the donor of a gift tax arising from a prior transfer to the donee.

(h) The transfer is exempt under s. 72.15 (1) (a).

(o) The transfer is payment of an award under ch. 949.

History: 1971 c. 310; 1975 c. 222, 331, 344.

Cross Reference: See 613.81 for exemption of gifts to hospital service insurance corporations.

Legislative Council Note, 1971: Sub. (1) (a) is like s. 72.75 (4) first part of sentence 1. Reference to subch. III is added for informational purposes only.

Sub. (1) (b) is like the last sentence of s. 72.75 (4). The language enumerates real property and adds the last 8 words to clarify the statute in accordance with long-standing administrative interpretation.

Sub. (1) (c) is like s. 72.80 (5); the generic word "employer" is substituted for an enumeration for clarity.

Sub. (1) (d) is new and exempts certain kinds of death benefits from the gift tax in the same way the internal revenue code s. 101 (b) exempts them from income tax.

Sub. (1) (e) contains the same substance as s. 72.80 (6).

Sub. (1) (f) is new and is drafted from internal revenue code s. 2515 (9). However, while the code gives the election to the donor spouse, this permits either to elect.

Sub. (1) (g) is new and constitutes an express departure from the policy of s. 72.81 (3) sentence 3.

Sub. (1) (h) to (n) and sub. (2) are a restatement of s. 72.79. [Bill 471-S]

72.77 Imposition of tax. The tax is imposed at the prescribed rates upon the transfer of property which is a gift measured by its clear market value on the date of the gift less enforceable liens, deductions and exemptions provided in this subchapter. In determining the taxable value of property transferred, a deduction is allowed for the amount of an enforceable lien on the property if the donee takes the property subject to that lien. Where property is transferred, sold or exchanged for less than its clear market value on the date of its transfer, the taxable transfer is measured by the amount by which the clear market value of the property exceeds the consideration.

History: 1971 c. 310.

Legislative Council Note, 1971: Sentences 1 and 3 are of the same substance as s. 72.76 (1). Sentence 2 carries forward the concept found in s. 863.13 which has also been applied in subch. II [bill 471-S]

72.78 Amount taxed. The total of all transfers to one donee by one donor within the same calendar year is considered a single transfer for the purposes of taxation under this subchapter.

History: 1971 c. 310.

Legislative Council Note, 1971: This is of the same substance as s. 72.76 (2). [Bill 471-S]

72.79 Valuation. (1) STANDARDS OF VALUATION. The standards by which the value of property is determined under s. 72.28 (1) apply to the determination of the value of a taxable transfer of property under this subchapter.

(2) DISPUTING VALUATION. Only the department may challenge a donee's statement of valuation under this subchapter.

(3) AGREEMENTS. The department may enter into an agreement with any person liable for a tax on a transfer in which the value of an interest in the transfer is not ascertainable under this subchapter, and may compound and settle the tax liability on terms it deems equitable and expedient.

History: 1971 c. 310.

Legislative Council Note, 1971: Various provisions on the valuation of gifts are scattered throughout the current gift tax statutes. Sub. (1) standardizes valuation methods with those used in the inheritance tax subchapter.

Subs. (2) and (3) restate current practice and differentiate the administration of valuation disputes from those of subch. II, where several additional parties can challenge a valuation and are parties interested in an agreement. [Bill 471-S]

72.80 INHERITANCE, ESTATE AND GIFT TAX

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72.80 Classification of donees. In determining the amount of gift tax due under this subchapter, donees are classified into 4 groups: class A, class B, class C and class D. These classes contain the same persons, by virtue of their relationship to the donor, as distributee classes A, B, C and D, respectively, in s. 72.16, except that spouses are included in donee class A instead of surviving spouses.

History: 1971 c. 310; 1973 c. 90

Legislative Council Note, 1971: This new approach parallels the classification for inheritance tax in s. 72.16. It replaces the classification currently in s. 72.77

Donee class A consists of persons currently grouped together in s. 72.77 (1) and includes 4 other categories of persons. These 4 categories are the wife or widow of a son and the husband of a daughter from s. 72.77 (2) and the widower of a daughter, included in s. 72.77 (4). Donee class A differs from distributee class A in that it includes "spouses" instead of "surviving spouses".

Donee class B consists of persons currently grouped together in s. 72.77 (2) except for the wife or widow of a son and the husband of a daughter which are placed in donee class A.

Donee class C consists of persons currently grouped together in s. 72.77 (3).

Donee class D consists of persons currently included in s. 72.77 (4) except for the widower of a daughter, included in donee class A. [Bill 471-S]

72.81 Annual exemption. Transfers of a clear market value of \$3,000 in any calendar year by any donor to any donee are exempt from taxation under this subchapter. This amount is taken out of the first \$25,000 transferred.

History: 1971 c. 310

Legislative Council Note, 1971: This is a restatement of s. 72.80 (intro.) and s. 72.80 (1). The annual exemption, however, is raised from \$1,000 to \$3,000 to parallel the federal annual gift tax exemption. [Bill 471-S]

72.82 Personal exemptions. (1) In addition to the annual exemption, an additional exemption from the tax, allowed only once and taken out of the first \$25,000, is permitted as follows:

(a) To a spouse, property of a clear market value of \$15,000; and

(b) To all other class A donees, property of a clear market value of \$4,000;

(c) To class B, C and D donees, no additional exemptions.

(2) The clear market value of property transferred to a donee in excess of the annual exemption must be aggregated from year to year until the maximum allowable personal exemption is exhausted.

History: 1971 c. 310

Legislative Council Note, 1971: Sub (1) lists the personal exemptions which are currently found in s. 72.80 (2) to (4).

The personal exemption of husbands is raised from \$5,000 (s. 72.80 (2)) to \$15,000 so that spouses will receive equal treatment under these provisions.

Other class A donees whose personal exemptions are increased are as follows: lineal ancestors and lineal descendants from \$2,000 (s. 72.80 (4)) to \$4,000; and wives or widows of a son and husbands or widowers of daughters from zero to \$4,000.

Other donees, as under current statutes, do not receive personal exemptions in addition to their annual exemptions

Sub. (2) is a restatement of the manner in which personal exemptions are computed, from s. 72.80 (2) to (4) [Bill 471-S]

72.83 Rates. When the value of transfers within the same calendar year exceeds the exemptions allowed under s. 72.82, the tax upon transfers to classes of donees specified in s. 72.80 is imposed upon the same amounts and at the same rates as imposed on classes of distributees under s. 72.18.

History: 1971 c. 310; 1973 c. 90.

Legislative Council Note, 1971: This parallels the new inheritance tax rate structure set out in s. 72.17, replacing ss. 72.77 and 72.78 (1) to (4) and (6)

As in the inheritance tax subchapter, this section imposes tax at a single rate upon transfers to each class of donees. It consolidates the 4 rates of ch. 72: "primary rates" (s. 72.77); "secondary rates" (s. 72.78 (1) to (4)); "emergency tax" (s. 72.78 (6)) and early payment discount (s. 72.81 (3) first part of sentence 2)

These new rates are substantial reductions for the wife or widow of a son and the husband or widower of a daughter. For other donees, these new rates are below the effective before-discount rates and are only slightly higher (by a few 100ths of a per cent) than the after-discount effective rates [Bill 471-S]

72.84 Rate limit. The tax imposed by this subchapter shall not exceed 20% of the clear market value of property transferred to any donee in a single calendar year.

History: 1971 c. 310

Legislative Council Note, 1971: This amends s. 72.78 (5) from 15% to take into account the merger of rates as discussed in the note to s. 72.83. [Bill 471-S]

72.85 Filing returns and payment of the tax. (1) DUTIES OF THE DEPARTMENT. The department shall supervise the administration of the gift tax and, to that end, shall possess the same powers which it has for the assessment of personal property and incomes, including the power to appraise the value of property transferred. The department may employ attorneys, accountants, clerks and assistants necessary to carry out the provisions of this subchapter.

(2) FILING. By April 15 of each year, the donor and the donee of any transfers during the preceding year must, if the aggregate value exceeds \$3,000, report the transfers and pay the tax to the department. These reports shall disclose all information required on the report form. Gift tax reports and the payment of tax shall be considered timely made if both are received by the department within 5 days of April 15 in a properly addressed envelope with 1st class postage duly prepaid, postmarked before midnight of April 15.

(3) PAYMENT; INTEREST; PENALTY. If the tax imposed is not timely paid, interest shall be charged and collected on the tax due at the rate of 8% per year from the date due until it is paid. In addition, if the required tax return is not timely filed, a penalty of 5% of the tax is imposed. If the tax is not paid by the due date, the

donee and donor are jointly and severally liable for this tax, penalty and interest. Where one person pays the tax, there is no right of contribution unless the person paying reserves it in writing on the filed tax return.

(4) CERTAIN TRANSFERS DEEMED GIFTS. One spouse may elect to have a transfer covered by s. 72.76 (1) (f), 1973 stats., between May 14, 1972, and May 8, 1976 deemed a gift by filing a gift tax return covering such transaction and paying any tax, with no interest or penalty, by April 15, 1978. Except as provided under s. 72.12 (4) (a), if either or both spouses die during this period, the transfer shall be deemed a gift.

History: 1971 c. 310; 1975 c. 222.

Legislative Council Note, 1971: Subs. (1) to (3) are like s. 72.81 (1) to (3) except the interest rate and penalty have been changed. [Bill 471-S]

72.86 Enforcement and collection. (1)

ADDITIONAL ASSESSMENT. No later than 4 years after the report required by s. 72.85 is filed, the department shall audit it and assess any additional tax which may be due. Interest shall be charged and collected at the rate of 8% per annum for the period from the date on which the report was due until payment. If no report of a transfer is filed, an assessment may be made any time after the report was due. Notice of an assessment shall be given to both the donor and donee by certified mail. If the additional tax is not paid within 30 days from the receipt of the notice, an additional penalty of 5% of the tax shall be imposed and collected.

(2) LIEN. The tax imposed by this subchapter is a lien upon the property transferred until paid, but not exceeding 10 years from the filing of the report of the transfer. If any part of the property comprised in the gift is sold by a donee or successor in title to a purchaser for an adequate and full consideration, that part shall be divested of and released from the lien, and the lien, to the extent of the value of the gift, shall attach to all the property of the donee (including after-acquired property) except property subsequently sold to a purchaser for an adequate and full consideration. This lien does not have priority over any lien of public record. 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 is satisfied that the collection of the tax will not be jeopardized, it may release the lien on any part of the property transferred. The executed release may be recorded with the register of deeds of the county in which the property therein described is located.

(3) DUTY TO FURNISH INFORMATION. If the department considers it necessary, it may

require any person, by notice served upon him by certified mail, to make a return, render statements under oath, or to keep records, which the department deems sufficient to show whether or not the person is liable for a tax under this subchapter. If any person so served fails to make a return, render information or keep records required by the department, an additional tax equal to 5% 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 this subchapter.

(4) APPLICABLE INCOME TAX PROVISIONS. All provisions of income tax statutes not in conflict with this subchapter on the following subjects apply to the administration of this subchapter: assessment, hearing and appeal procedures (including ss. 73.01 and 73.015), preparation of assessment and tax rolls, certification of taxes due and corrections thereof, collection (including s. 71.135) and refund procedures.

(5) DEPARTMENT OF JUSTICE; DUTIES. The department of justice shall enforce the recommendations and directions of the department of revenue in all matters pertaining to gift tax. Where the gift tax collectible exceeds or probably exceeds \$1,000, there shall be no compounding, composition or settlement of the taxes until the department of revenue has consented in writing to the compounding, compromise or settlement.

(6) ADDITIONAL PENALTY. Any person who wilfully attempts to evade or defeat this tax or its payment, or who makes any false or fraudulent return or statement, with intent to evade or defeat the assessment required, in addition to other penalties provided, shall be fined not less than \$100 nor more than \$5,000 or imprisoned not more than one year or both. Any person who wilfully aids or assists in the preparation of a wilfully false or fraudulent return or of any information for the purpose of evading or defeating the assessment or collection of this 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, shall be fined not less than \$100 nor more than \$5,000 or imprisoned not to exceed one year or both.

History: 1971 c. 310; 1975 c. 224.

Legislative Council Note, 1971: Subs. (1) to (6) contain the same substance as s. 72.81 (4), (6), (7), (5), (9) and (8), respectively. In sub. (1) the rate of interest has been changed to 8%, and it is clarified that the statute of limitations does not begin to run if no report is filed. Subs. (1) and (3) provide for a penalty of 5% of the tax due. Sentence 3 is added to sub. (2) for clarification. [Bill 471-S]

See note to 77 27, citing 62 Atty. Gen. 251.

72.87 Relationship between subchapters II, III, and IV. (1) **REFUNDS.** When a transfer is taxed under subch. IV and then becomes taxable under subch. II or III:

(a) If the person who paid the tax is living, it shall be refunded to him without interest; and

(b) If the decedent paid the tax, the refund without interest shall be paid to his estate and shall be included as an asset in the inventory of the estate.

(2) **CONSTRUCTION.** Nothing in this subchapter shall in any way be construed to conflict with, limit or modify provisions of subch. II or III or the income tax statutes.

History: 1971 c. 310

Legislative Council Note, 1971: Subs. (1) and (2) are restatements of ss. 72.75 (4) and 72.81 (12). Reference to the estate tax (subch. III) is included for clarity. [Bill 471-S]