

1975 Senate Bill 113

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## CHAPTER 222, Laws of 1975

AN ACT to repeal 72.76 (1) (f); to amend 71.05 (1) (g); to repeal and recreate 72.12 (6); and to create 72.85 (4) of the statutes, relating to the application of the inheritance tax to surviving joint tenants for property held in joint tenancy.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 71.05 (1) (g) of the statutes is amended to read:

71.05 (1) (g) Add or subtract from federal adjusted gross income, as appropriate, on sale, exchange, abandonment or other disposition in a transaction in which gain or loss is recognized to the owner of property acquired from a decedent, as described in sec. 1014 of the internal revenue code, by inheritance, exclusive of property constituting income under sec. 102 (b) of the internal revenue code, the difference between the federal basis and the ~~inheritance tax value when, by the exercise of the election of alternate values pursuant to sec. 2032 of the internal revenue code or for any other reason the federal basis of such property is more or less than the date of death value determined for inheritance tax purposes in the estate of the person from whom the property was acquired~~ Wisconsin basis. The Wisconsin basis of property acquired from a decedent by inheritance shall be determined under the internal revenue code, but the value of property properly includible for Wisconsin inheritance tax purposes shall be used in lieu of the value of property includible for federal estate tax purposes. In this paragraph, the exemption under s. 72.12 (6) (b) shall not be deemed property properly includible for inheritance tax purposes.

SECTION 2. 72.12 (6) of the statutes, as affected by chapter 94, laws of 1975, is repealed and recreated to read:

72.12 (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.

SECTION 3. 72.76 (1) (f) of the statutes is repealed.

SECTION 4. 72.85 (4) of the statutes is created to read:

72.85 (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 the effective date of this act 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.

SECTION 5. **Study committee.** (1) There is created a special committee on inheritance taxation composed of 9 members as follows:

(a) Two members from the senate and 2 members from the assembly to be appointed as are members of standing committees.

(b) An attorney with experience in the area appointed by the governor.

(c) A probate judge appointed by the governor.

(d) The secretary of revenue or his designee.

(e) Two public members appointed by the legislative council.

(2) The special committee shall:

(a) Review Wisconsin's inheritance and gift tax laws and any related income tax and other state statutes, including those pertaining to the taxation of joint tenancy property and of other forms of ownership by 2 or more persons, to assess the impact and burden of these laws on various classes of distributees (recipients).

(b) Review and evaluate the equivalent federal statutes, laws of other states, bills recommending change which were presented to the 1975 Wisconsin legislature, and the *Department of Revenue v. Kersten* (decided by the Wisconsin Supreme Court on March 2, 1976).

(3) The committee shall be attached to the legislative council for administrative purposes and the legislative council shall furnish any staff deemed necessary by the special committee.

(4) The special committee shall report its findings and recommendations to the 1977 legislature.

SECTION 6. **Appropriation increase.** The appropriation under section 20.765 (3) (e) of the statutes, as affected by the laws of 1975, is increased by \$5,000 in 1976-77 to provide appropriate staff services under SECTION 5 of this act.

SECTION 7. **Effective date.** SECTIONS 1, 2 and 3 of this act shall apply to all transfers because of a death or gift and to transfers covered by section 71.05 (1) (g)

of the statutes, as affected by this act, which occur on or after either the day following publication or July 1, 1976, whichever is later.

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