

7. Whether the joint property was purchased with funds from joint bank accounts and the sources of funds in those accounts.

8. Whether there were any agreements between the joint tenants which would affect equity in the property (e.g., a partnership agreement or an agreement that one joint tenant pay debts of the other).

9. Whether the joint property was purchased from the sale of assets given to the survivor by the decedent or whether the joint property was purchased from the income derived from assets given to the survivor by the decedent. In either case, whether adequate consideration was given by the survivor for these gifts shall be indicated.

10. Improvements on the property and sources of the funds, materials of labor.

Note: Section 72.12 (6), Stats., relating to the inheritance taxation of joint tenancy property, was enacted by the 1971 legislative session and applies to all deaths which occur on and after May 14, 1972 and prior to July 1, 1976. Chapter 310, Laws of 1971, which enacted this statute contains the following note after the joint tenancy provision: "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."

Under a literal reading of the statute, if property is owned in joint tenancy and one joint tenant dies, the decedent is presumed to have initially acquired the full value of the asset and the survivor or survivors are presumed to inherit and are taxed on the property's full value. A surviving joint tenant will not be subject to the inheritance tax, however, on any portion of the property to which the survivor can show he or she actually contributed.

In *Department of Revenue v. Kersten* (1976), 71 Wis. 2d 757, the court held that contribution is not limited to money or property, but includes the "services, industry and skills" of a joint tenant in the operation of a farm enterprise.

History: Cr. Register, January, 1977, No. 263, eff. 2-1-77.

Tax 10.06 Taxation of joint tenancy property for deaths on or after July 1, 1976. (ss. 72.01 (12), 72.12 (4) (a) and (6), 72.13 and 72.85 (4), Stats.) Property held by 2 or more persons with the right of survivorship (hereafter "joint property") shall have the value subject to inheritance tax determined as follows:

(1) **COMPLETED TRANSFERS.** Any joint property requiring the signature of all joint tenants to transfer the entire property which, to the extent of unequal monetary contribution, was deemed a gift at the time of its acquisition or the creation of the joint tenancy and any subsequent increments thereto shall have its taxable value determined by dividing the joint property's date of death clear market value, less any liens against the property, by the number of joint tenants on the date of death including the decedent.

(2) **INCOMPLETE TRANSFERS.** (a) The full date of death clear market value of any joint property requiring the signature of only one joint tenant to transfer the entire property which, to the extent of unequal monetary contribution, was not deemed to be a gift at the time of its acquisition or the creation of the joint tenancy and any subsequent increments thereto shall be subject to inheritance tax. Any portion contributed in money or money's worth by the survivor, as described in Tax 10.05, may be excluded.

(b) Unless there is a clear showing to the contrary, the allocation of contribution in money or money's worth shall apply equally to all joint property held by the same joint tenants. The amount is computed as follows:

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dollar amount of survivor's contribution to date of death

full clear value of all joint property at death

full clear market value of each asset

survivor's contribution to each asset

$$\frac{\text{dollar amount of survivor's contribution to date of death}}{\text{full clear value of all joint property at death}} \times \frac{\text{full clear market value of each asset}}{\text{full clear market value of each asset}} = \text{survivor's contribution to each asset}$$

(3) TRANSFERS IN CONTEMPLATION OF DEATH. Any joint tenancies created or joint tenants added within 2 years of a decedent's date of death are covered by s. 72.12 (4) (a), Stats.

Note: Example #1: The following example shows how to compute the taxable and tax exempt portions of joint property under sub. (1). Assume that the full clear market value of a farm owned in joint tenancy by husband, wife and child is \$120,000; that a mortgage of \$30,000 exists against the farm and that the husband dies:

| | |
|--|------------|
| Date of death full clear market value | \$ 120,000 |
| Subtract mortgage outstanding on date of death | -30,000 |
| | <hr/> |
| Subtotal | \$ 90,000 |
| Divide by number of joint tenants at time of death | ÷ 3 |
| | <hr/> |
| Amount subject to inheritance tax | \$ 30,000 |
| Joint tenancy exemption | \$ 60,000 |

The fractional share times the number of surviving tenants (2) equals the joint tenancy exemption for deaths prior to January 1, 1978. On or after January 1, 1978, there is no joint tenancy exemption; the survivor's interests are excluded; and, only the decedent's interest is included in the taxable estate (\$30,000).

Example #2: The following example shows how to compute the survivor's contribution to joint property under sub. (2) (b). Assume that the surviving joint tenant contributed \$20,000 to a farm with a \$120,000 date of death value and that the survivor also acquired a \$20,000 joint savings account from decedent:

farm:

$$\frac{\$20,000}{\$140,000} \times \$120,000 = \$17,142.86$$

savings account:

$$\frac{\$20,000}{\$140,000} \times \$20,000 = \$2,857.14$$

While the real estate will be included for inheritance tax at fractional share without considering contribution, it will be necessary to allocate a prorata share of monetary contribution to all joint assets unless it can be clearly traced to a specific asset. In this example, \$2,857.14 is available for contribution to the savings account unless it can be clearly shown otherwise.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Tax 10.10 Taxation of savings, mortgage and credit life insurance. (ss. 72.12 (7), 72.13 (2) and 72.14 (1) (a), Stats.) (1) SAVINGS INSURANCE. If, upon the death of a depositor in a financial institution, a life insurance payment is made based on the amount in a savings account of the decedent at the time of death, such payment is taxable as insurance under s. 72.12 (7).

(a) If the payment is made to a named beneficiary, it shall be includible with other insurance proceeds paid to distributees other than the decedent's estate and shall qualify for the \$10,000 insurance exclusion provided in s. 72.12 (7) (b), Stats.

(b) If the payment is made to the financial institution and is added to the decedent's account, and if the account was held in joint tenancy, the account will then be paid to the surviving joint tenants. The insurance portion of the account qualifies for the \$10,000 insurance exclusion.

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(c) If the account is solely owned and is paid to the personal representative of the decedent's estate or to the estate itself, the portion of the account representing insurance proceeds shall not qualify for the \$10,000 insurance exclusion.