

## CHAPTER 72.

## INHERITANCE TAX ACT.

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72.01 **Subjects liable.** A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed, or any interest therein, or income therefrom in trust or otherwise, to any person, association or corporation, except county, town or municipal corporations within the state, for strictly county, town or municipal purposes, and corporations of this state organized under its laws or voluntary associations organized solely for religious, charitable or educational purposes, and to any national organization of veterans of the armed forces of the United States or subordinate unit thereof, which shall use the property so transferred exclusively for the purposes of their organization, within the state, in the following cases, except as hereinafter provided:

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

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

(3) **TRANSFERS IN CONTEMPLATION OF DEATH.** When the transfer is of property, made by a resident or by a nonresident when such nonresident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death. Every transfer by deed, grant, bargain, sale or gift, made within two years prior to the death of the grantor, vendor or donor, of a material part of his estate, or in the nature of a final disposition or distribution thereof, and without an adequate valuable consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this section.

(4) **TRANSFER BEFORE OR AFTER PASSAGE OF ACT.** Such tax shall be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof, by any such transfer whether made before or after the passage of sections 72.01 to 72.24, inclusive; provided, that property or estates which have vested in such persons or corporations before this act shall take effect, shall not be subject to a tax; and provided further, that contingent interests created by the will of any person who died prior to the passage of this act shall not be taxed.

(5) **TRANSFER UNDER POWER OF APPOINTMENT.** Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property, made either before or after the passage of sections 72.01 to 72.24, inclusive, such appointment, when made, shall be deemed a transfer taxable under the provisions of sections 72.01 to 72.24, inclusive, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same

within the time provided therefor, in whole or in part, a transfer taxable under the provisions of sections 72.01 to 72.24, inclusive, shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

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

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

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

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

(9) **RECIPROCITY AS TO NONRESIDENT DECEDENTS.** Personal property of a nonresident decedent made taxable under this chapter, except tangible personal property having an actual situs in this state, shall not be subject to the tax so imposed if a like exemption was allowed at the time of death of such decedent by the laws of the state, territory or district of the decedent's residence in favor of residents of this state, provided, that this section shall not apply unless a tax is imposed on the transfer of said property by the laws of the state, territory or district of residence. [1939 c. 168, 204, 405; 1939 c. 515 s. 6b; 1945 c. 280, 569]

**Note:** Corporate stock transferred upon the exercising of an option of a surviving stockholder given by a deceased stockholder's will pursuant to a mutual contract was a transfer under the will, and not under the contract, rendering it subject to an inheritance tax. Will of Jones, 206 W 482, 240 NW 186.

In a proceeding to determine inheritance taxes, the evidence was held insufficient to overthrow the statutory presumption, and to establish, contrary to the findings and conclusion of the trial court, that the gift of shares of stock to a son by a decedent while incurably ill was in contemplation of death. Estate of Moore, 208 W 172, 242 NW 496.

Under (3) a transfer by means of a voluntary irrevocable trust whereby the donor retained the income for life and directed the distribution of the corpus after his death,

was taxable as one intended to take effect in possession or enjoyment at or after death. Estate of Waite, 208 W 307, 242 NW 173.

The evidence held sufficient to support the conclusion of the county court that a testator's gifts, amounting to nearly two million dollars, to his wife, children, and others, made within two years before his death, constituted a material part of his estate, were without adequate valuable consideration, were in the nature of a final distribution, and were made in contemplation of death, and taxable as such under the statute. The inheritance tax statutes, are not unconstitutional as creating an irrebuttable presumption, nor as imposing graduated tax on gifts inter vivos, nor as requiring persons to pay taxes on property belonging to others, in violation of the due process of law provision of the federal constitution or the uni-

formity of taxation provision of the state constitution. Will of Harnischfeger, 208 W 317, 242 NW 153, 243 NW 453.

A gift of realty made by deed absolute with the oral understanding that the donor was to have all the income from the property during his lifetime was subject to the inheritance tax as being made with the intention that it should not take effect until the death of the donor; this is so, since the gift was not completed, and the use and enjoyment never passed to the donee until the death of the donor. Estate of Ogden, 209 W 162, 244 NW 571.

Deceased's making out stock certificates in names of his widow and children did not vest title without delivery, actual or constructive. Estate of Heller, 210 W 474, 246 NW 683.

Requests to relatives are taxable, whether relatives are rich or poor. Will of Chafin, 210 W 675, 247 NW 325.

Statutes provide complete scheme for valuing interests in estates given by will and for imposing tax on interests transferred on testator's death and for payment of tax on its imposition, whether actual enjoyment of interest is present or future. Realty, insurance, and annuity for life to testator's wife, annuities to testator's brother and sister, on wife's death, and residue to fraternal lodge for charitable purposes, transferred by will, were subject to valuation for inheritance tax purposes at time of testator's death. State v. Merrill, 212 W 15, 248 NW 909.

Where in consideration of gifts to Bible Society, it agreed to give annuities to donor, transactions held not to amount to transfers intended to take effect after death of grantor so as to subject such transfers to inheritance tax where no trust was created and donees had right to do with funds as they pleased before donor's death. If transactions amounted to purchases of annuities, money paid over by donor was not subject to inheritance tax. Estate of Hamilton, 217 W 491, 259 NW 433.

Antenuptial settlement providing that, in consideration of \$25,000 and other sums payable out of husband's estate upon his death, wife released all her right to share otherwise in her husband's estate held not subject to inheritance tax, since settlement was not a deed, grant, bargain, sale or gift, made in contemplation of grantor's death and without adequate consideration within statute imposing tax on such transfers. Will of Koeffler, 218 W 560, 260 NW 638, 261 NW 711.

A bequest to trustees in trust to be administered partly for charitable purposes and partly for the benefit of the testator's widow and other beneficiaries so long as they should live was not exempt from inheritance tax as a transfer to an association organized "solely" for charitable purposes, even if the trustees should be considered as constituting an "association" within the meaning of the statute, a matter which is not decided. Will of Koch, 222 W 6, 267 NW 320.

The phrase "in contemplation of death" as used in (3) must be distinguished from the ordinary expectation of death which everyone entertains. In order that a gift be made in contemplation of death, the thought of death must be the impelling cause, inducing cause, the controlling motive. Will of Daniels, 225 W 502, 274 NW 435.

Where a testatrix exercised a power of appointment by her will, the transfers to the appointees or distributees under her will were taxable as part of her estate, notwithstanding the transfers to the appointees were taxed in the estate from which the testatrix received her power of appointment. Will of Morgan, 227 W 288, 277 NW 650, 278 NW 359.

The decision in the Week's case (169 W 316) is examined and adhered to. In determining the amount of inheritance taxes no deduction is to be made on account of the federal estate tax. In re Kootz Will, 228 W 306, 280 NW 672. But the federal estate tax is made deductible by chapter 204, Laws 1939, amending 72.01 (8).

An order in the testator's estate approving a composition agreement and determining the inheritance tax was not res judicata as respects the liability of the donee's estate for inheritance tax on the power of appoint-

ment, since there were different parties, different rights and different subject matter. In re Nunnemacher's Will, 230 W 93, 283 NW 326.

The construction of the statute imposing inheritance tax on the clear market value of property, as requiring valuation of a newspaper stock at market value, though the stock was sold for less because of provision in the will restricting the field of purchasers was proper. In re Nieman's Estate, 230 W 23, 283 NW 452.

Where the testator's newspaper stock was sold at less than the appraised value, under the will requiring the sale to persons who would carry out the testator's ideals, evidence concerning a higher offer which was ignored was admissible in proceeding for the valuation of such stock for inheritance tax purposes. In re Nieman's Estate, 230 W 23, 283 NW 452.

Subsection (3), Stats. 1935, is constitutional. In re Nieman's Estate, 230 W 23, 283 NW 452.

Subsection (7), Stats. 1937, does not include within the taxable class insurance effected by the insured for the benefit of another who paid the premiums out of his own funds. As to insurance on the life of a deceased insured payable to a third person and subject to inheritance taxation, no part of the amount of the claims allowed against the estate of the deceased can be deducted from the proceeds of such insurance in computing the inheritance tax thereon; such insurance being made a part of the estate for the purpose of inheritance taxation only, and not being liable on account of claims allowed against the estate. Estate of Siljan, 233 W 54, 283 NW 775.

Where the wife, although given a real power of appointment, could exercise it only on the contingency that a surviving child of the testator predeceased her, and all of the children survived the wife, the contingency did not arise and the property passed under the will. Hence the wife's attempt to exercise the power by her will was nugatory and transferred nothing on which an inheritance tax could be imposed in her estate under (5). Estate of Rees, 233 W 635, 290 NW 167.

Chapter 204, Laws 1939, effective July 3, 1939, amending 72.01 (8), so as to provide that federal estate taxes "shall be deemed debts and shall be deducted" in determining the value of the property transferred on which the state inheritance tax is to be computed, applies only to the estates of persons dying after its effective date. Estate of Benjamin, 235 W 152, 292 NW 304.

That the residuum of the testatrix's estate passed to the surviving residuary legatee on the death of the testatrix so that this transfer then became subject to an inheritance tax, and that on the death of the residuary legatee shortly thereafter the property passed from her to her heirs so that, in the administration of her estate, the second transfer also became subject to an inheritance tax on the interest which then passed from her to her heirs, did not result in "double taxation." Will of Marshall, 236 W 132, 294 NW 527.

As used in the inheritance tax act, the terms "fair market value", "clear market value" and "cash value" are for all practical purposes identical. The "clear market value" of property for inheritance tax purposes is the sum which the property would bring on a fair sale when sold by a willing seller not obliged to sell to a willing buyer not obliged to buy. When sales are made under such circumstances that the fair market value of the property is not obtained, the sale price is not controlling and does not conclusively fix the clear market value of the property for inheritance tax purposes. Estate of Ryerson, 239 W 120, 300 NW 732.

Where 2 sisters converted Wisconsin real estate, in which they had equal interests, into the form of a note secured by a trust mortgage on such real estate, whereby each sister was to receive only her proportionate share of the income during her life, and the principal, payable to the trustee in Wisconsin, was to be paid to the surviving sister on the death of the other, one-half of the principal which became payable to the surviving

sister, residing in Wisconsin, on the death of the other sister, constituted a transfer from the deceased sister without valuable and adequate consideration, and as such was taxable under (3), as a transfer intended to take effect in possession or enjoyment after death, and was not exempted by (9). 72.01 (9), Stats. 1939, does not extend to a transfer from a deceased resident of a foreign country, and is constitutional. Estate of Miller, 239 W 551, 2 (2d) NW 256.

An administrative committee of the cor-

poration owning and operating the Masonic Home is not a "voluntary association" within the provision in section 72.01. Estate of Thronson, 243 W 73, 9 NW (2d) 641.

72.01 (9), Stats. 1943, applies to the transfer of intangible personal property contained in an inter vivos trust, subject to a power of appointment on the death of the nonresident donee-owner of the power of appointment. Estate of Rohnert, 244 W 404, 12 NW (2d) 684.

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

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

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

(4) **EIGHT PER CENTUM, WHERE.** Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of eight per centum of the clear value of such interest in such property. [1939 c. 311; 1945 c. 300, 502]

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

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

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

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

(4) **RATE WHERE AMOUNT OVER FIVE HUNDRED THOUSAND DOLLARS.** Upon all in excess of five hundred thousand dollars five times the primary rates. [1943 c. 369]

**72.035 Rate limit.** The tax imposed by section 72.02 and section 72.03 shall not exceed 15 per cent of the property transferred to any beneficiary. [1943 c. 369]

**72.04 Exemptions.** The following exemptions from the tax, to be taken out of the first twenty-five thousand dollars, are hereby allowed:

(1) All property transferred to municipal corporations within the state for strictly county, town or municipal purposes, or to corporations of this state organized under its laws, solely for religious, humane, charitable or educational purposes, and to any national organization of veterans of the armed forces of the United States or subordinate unit thereof, which shall use the property so transferred exclusively for the purposes of their organization, within the state, and all property transferred to banks or trust companies of this state, or to individuals residing in this state, as trustees, in trust exclusively for public, religious, humane, charitable, educational or municipal purposes in this state, and all property transferred to the American National Red Cross or any chapter thereof, shall be exempt, including property heretofore transferred on which the tax has not been paid.

(1a) All property transferred to any corporation, organization, association or foundation of this state, in trust, and for the direct financial benefit of any town, city, school district, village or county of this state.

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

(4) Property of the clear value of two hundred and fifty dollars transferred to each of the persons described in subsection (3) of section 72.02 shall be exempt.

(5) Property of the clear value of one hundred dollars transferred to each of the persons described in subsection (4) of section 72.02 shall be exempt.

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

(7) Bequests not to exceed five hundred dollars for the care and maintenance of the burial lot of the deceased and bequests not to exceed five hundred dollars to the cemetery in which the said deceased is buried, and bequests not to exceed one thousand dollars for the performance of a religious purpose or religious service for or in behalf of the deceased or for or in behalf of any person named in his will, shall be exempt from any inheritance tax.

(8) Whenever part of an estate is within and part without the state, there shall be deducted for tax purposes only a proportion of the debts, expenses of burial and of administration, equal to the proportion which the property within the state bears to the entire estate, and any beneficiary shall be entitled only to a proportion of his Wisconsin exemption equal to the proportion which his interest in the property within the state bears to his entire interest in such estate. [1933 c. 233, 275; 1933 c. 454 s. 7; 1937 c. 353; 1939 c. 311; 1943 c. 131, 260, 369; 1945 c. 552 s. 17; 1945 c. 280, 569]

**Note:** A transfer to a trustee to pay an employes' mutual aid society half a specified proportion of the net income annually and the same proportion of the principal on the termination of the trust is not exempt as one exclusively for a charitable purpose, such society not being a voluntary association, organized solely for religious, charitable, or educational purposes, but being a mutual benefit association supported by dues and assessments. Will of Prange, 208 W 404, 243 NW 488.

A hospital which pays no dividends and is largely supported by donations is a charitable institution, and a transfer of property by will to a trustee to establish and maintain such a hospital is exempt from an inheritance tax. Estate of Price, 192 W 580, 213 NW 477; Will of Prange, 208 W 404, 243 NW 488.

Prior to amendment made by 1933 c. 275, the credit allowed by (2) to the children for the inheritance tax paid by the widow of a decedent was not limited to taxes computed on the transfer of the specific property coming from the father through the widow, but was to be applied on the entire inheritance tax assessed against each child on the transfer of any property by such widow to such child. Will of Brown, 209 W 332, 245 NW 66.

Subsection (1), Stats. 1941, does not require that the bank-trustee shall itself administer the trust, but it is sufficient if the

bank pays over the bequest to a legal entity capable of and charged with the duty of devoting it to the charitable purpose expressed by the will. A transfer effected by a will giving the testator's property to a bank, in trust, and directing the trustee to convey the property to the Masonic Home on the death of the life tenants, is, as to the interest of the Home, exempt from inheritance taxation as a transfer of property to a bank in trust exclusively for charitable purposes, and it is immaterial that the Home, concededly a charitable institution, is not a legal entity capable of taking title to the property, and that the property may ultimately be conveyed to the corporation which owns and operates the Home and which is not organized solely for charitable purposes so as to bring a transfer to it within another exemption provision. Estate of Thronson, 243 W 73, 9 NW (2d) 641.

Where the proceeds of life insurance were payable to the executors as testamentary trustees for the benefit of the insured's wife and daughter and were turned over to the trustees for the benefit of the widow and children such proceeds were not subject to federal estate tax as insurance proceeds receivable by executors under Revenue Act of 1926, Section 302 (g). United States v. First National Bank, 133 F (2d) 886.

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

be entitled to the same fee as is provided for the recording of the satisfaction of a mortgage.

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

(3) **BOND OR RECEIPT NECESSARY.** But no executor, administrator or trustee shall be entitled to a final accounting of an estate, in settlement of which a tax is due under the provisions of sections 72.01 to 72.24, inclusive, unless he shall produce such receipts or a certified copy thereof or unless a bond shall have been filed as prescribed by section 72.09. [1935 c. 318; 1943 c. 20]

**Note:** Under provisions in 72.05 (1), Stats. 1943, that a lien for inheritance tax and personal liability for the tax shall remain until paid, the lien and liability are discharged only by payment of the tax, and the ten-year statute of limitations on actions in favor of the state, 330.18 (6), is inapplicable to bar a proceeding to determine inheritance tax. Estate of Frederick, 247 W 268, 19 NW (2d) 249.

**72.06 Discount; interest.** If such tax is paid within one year from the accruing thereof, a discount of 5 per cent shall be allowed and deducted therefrom. If such tax is not paid within 18 months from the accruing thereof, interest shall be charged and collected thereon at the rate of 10 per cent per annum from the time the tax accrued; unless by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax shall not be determined and paid as herein provided, in which case interest at the rate of 6 per cent per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which 10 per cent shall be charged. In all cases when a bond shall be given under the provisions of section 72.09, interest shall be charged at the rate of 6 per cent from the accrual of the tax, until the date of payment thereof. In computing time under this section, the day of death shall be excluded. [1943 c. 369]

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

**Note:** Where creator of testamentary trust deposited money with city treasurer for payment of any taxes owing, and creator's executors inventoried treasurer's certificate and accounted for interest thereon and residue after payment of taxes, trust estate held not subject to lien on theory that money was used to discharge taxes upon trust property. Will of Stack, 217 W 94, 258 NW 324. Since the inheritance tax is a tax upon the right to receive property, the burden of that tax rests upon those who received the property unless the testator makes some other provision in his will. In re Cullen's Estate, 231 W 292, 285 NW 759.

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

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

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

**Note:** Where the executors reserved the right to refund on the ground that part of the inheritance tax was illegal, but failed to seek a refund under the statute, the county was not liable in a conversion action six years later. An allegation that the county treasurer reserved the taxes and the county took the money subject to the conditions accompanying the tender were mere conclusions of law. *Schlesinger v. Milwaukee County*, 42 F (2d) 21.

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

**72.10 Bequests to executors for services.** If a testator bequeaths property to one or more executors or trustees in lieu of their commissions or allowances, or makes them his legatees to an amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed, above the amount of commissions or allowances prescribed by law in similar cases, shall be taxable by sections 72.01 to 72.24, inclusive.

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

(2) **BY BANKS AND TRUST COMPANIES.** No safe deposit company, bank, or other institution, person or persons, holding securities or assets of a nonresident decedent, nor any foreign or domestic corporation doing business within this state in which a nonresident decedent held stock at his decease, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended transfer be served upon the department of taxation and public administrator at least ten days prior to the said transfer; nor shall any such safe deposit company, bank, or other institution, person or persons, nor any such foreign or domestic corporation, deliver or transfer any securities or assets of the estate of a nonresident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such securities or assets under the provisions of the inheritance tax laws, without an order from the proper court authorizing such transfer; and it shall be lawful for the department of taxation or public administrator, personally or by representative, to examine said securities or assets at any time before such delivery or transfer. Failure to serve

such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax as herein provided, shall render said safe deposit company, trust company, bank, or other institution, person or persons, or such foreign or domestic corporation, liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of the inheritance tax laws. The department of taxation may issue a certificate authorizing the transfer of any such stock, securities or assets whenever it appears to the satisfaction of the department that no tax is due thereon.

(3) RESIDENTS. No safe deposit company, trust company, bank, corporation or other institution, person or persons having in possession or control securities, deposits or other assets, belonging to or standing in the joint names of a resident decedent and one or more other persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, bank, corporation or other institution, making the delivery or transfer herein provided, shall deliver or transfer the same to the survivor or survivors, nor to the executors, administrators or legal representative of such decedent, nor to any person or persons whomsoever, unless notice of the time and place of such intended delivery or transfer be served upon the department of taxation and public administrator at least 10 days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, bank, corporation or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the joint names of a resident decedent and one or more other persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, bank, corporation or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed under the provisions of the inheritance tax laws on account of the delivery or transfer of such securities, deposits or other assets, including the shares of capital stock of, or other interests in, the safe deposit company, trust company, bank, corporation or other institution making the delivery or transfer, under the provisions of this section, unless the department of taxation consents thereto in writing. And it shall be lawful for the department of taxation or public administrator, personally or by representative to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax and interest as herein provided, shall render said safe deposit company, trust company, bank, corporation or other institution, person or persons liable to the payment of the amount of tax and interest due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interest in, the safe deposit company, trust company, bank, corporation or other institution making the delivery or transfer. The department of taxation may issue a certificate authorizing the delivery or transfer of any such stock, securities, deposits or other assets, whenever it appears to the satisfaction of the department that no tax is due thereon. This subsection shall not be applicable to bank accounts or property belonging to or standing in the name of a partnership.

(8) EVIDENCE OF VALUE OF SECURITIES. Whenever any decedent shall have left any stocks, bonds or other securities issued by any corporation, joint stock company, partnership, or association, domestic or foreign, owning property or doing business in this state, or any interest therein, or in the assets thereof, all inventories, books, papers, income tax returns and records thereof shall be competent evidence in any court, and shall be accessible to the executor or administrator of the estate of such decedent, the appraisers, public administrator, inheritance tax counsel, or other person designated by the court, for the purpose of ascertaining the true value of such stocks, bonds, securities or other interests, under such conditions and limitations as the court may prescribe; and the court may order the production in court of any such inventories, books, papers and records, and may require the attendance and examination in court of any officer or employe of any such corporations, joint stock company, partnership or association. [1933 c. 269, 376; 1943 c. 20, 440]

**Note:** No prejudicial error resulted from the exclusion of income tax returns of the corporation offered under the provisions of (8), Stats. 1931, on the question of the value of the stock, there being available and before the court the books and records of the corporation, which, in a proper view of the statute, are primary evidence, and such returns must be secondary and subject to objection as not the best evidence. Estate of Lemke, 206 W 5, 238 NW 806.

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

the county court first acquiring jurisdiction hereunder, shall retain the same to the exclusion of every other county court.

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

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

**72.13 Special appraiser; appointment; transfers.** The county court, upon the application of any interested party, including the department of taxation and public administrator, or upon its own motion, shall as often as, and whenever occasion may require, appoint a competent person as special appraiser to fix the fair market value at the time of the transfer thereof of the property of persons whose estate shall be subject to the payment of any tax imposed by sections 72.01 to 72.24, inclusive. [1943 c. 20]

**72.14 Appraiser; duties; powers; compensation.** Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the public administrator, and to such persons as the county court may by order direct, of the time and place when he will appraise such property. He shall, at such time and place, appraise the same at its fair market value, as herein prescribed, and for that purpose, the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing, to the said county court, together with the depositions of the witnesses examined, and such other facts in relation thereto and to the said matter as the said county court may order or require. Every appraiser shall be paid on the certificate of the county court at the rate of \$7.50 per day for every day actually and necessarily employed in such appraisal, and his actual and necessary traveling expenses and the fees paid such witnesses, which fees shall be the same as those now paid to witnesses subpoenaed to attend in courts of record, by the county treasurer out of any funds he may have in his hands on account of any tax imposed under the provisions of sections 72.01 to 72.24. [1945 c. 178]

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

(2) **NOTICE OF HEARING.** Except where it is evident to the court that no tax is due, notice of hearing to determine the inheritance tax shall be given in the same manner and may be included in the notice of hearing the administration account as provided in section 317.11, and the hearing to determine the tax shall be held at the same time and place as the hearing provided in said section or at such other time as the court may order. Notice in writing of the hearing shall be mailed to the public administrator and to the department of taxation not less than 20 days before the hearing upon such blanks and containing such information as the department may provide or require.

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

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

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

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

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

(8) **ESTATES IN TRUST.** When property is transferred in trust or otherwise, and the rights, interests or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon such transfer at the lowest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of sections 72.01 to 72.24, inclusive, and such tax so imposed shall be due and payable forthwith out of the property transferred; provided, however, that on the happening of any contingency or condition whereby the said property or any part thereof is transferred to a person

or corporation, which under the provisions of sections 72.01 to 72.24, inclusive, is required to pay a tax at a higher rate than the tax imposed, then such transferee shall pay the difference between the tax imposed and the tax at the higher rate, and the amount of such increased tax shall be enforced and collected as provided in sections 72.01 to 72.24, inclusive; provided further, that if on the happening of any such contingency or condition the said property or any part thereof is transferred to persons or corporations, which under the provisions of sections 72.01 to 72.24, inclusive, would be required to pay less tax on the transfer than has been paid, a return shall be made to the person or persons entitled thereto of so much of the tax as will reduce the same to the amount which would have been assessed originally on such transfer, had the date of the happening of such condition or contingency and the persons ultimately receiving such property been known when the original assessment was made. Such return of tax shall be made in the manner provided in section 72.08.

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

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

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

(12) REAPPRAISAL IN CIRCUIT COURT. Within two years after the entry of an order or decree of the county court, determining the value of an estate and assessing the tax thereon, the attorney-general may, if he believes that such appraisal, assessment or determination has been fraudulently, collusively or erroneously made, make application to the circuit judge of the judicial circuit in which the former owner of such estate resided, for a reappraisal thereof. The circuit judge to whom such application is made may thereupon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers, be subject to the duties, shall give the notice and receive the compensation provided by sections 72.13 and 72.14. Such compensation shall be payable by the county treasurer out of any funds he may have on account of any tax imposed under the provisions of sections 72.01 to 72.24, inclusive, upon the certificate of the circuit judge. The report of such appraiser shall be filed in the circuit court, and thereafter the same proceedings shall be taken and had by and before such circuit court as herein provided to be taken and had by and before the county court. The determination and assessment of such circuit court shall supersede the determination and assessment of the county court, and shall be filed in the office of the state treasurer, and a certified copy, transmitted to the county court of the proper county. [1937 c. 355; 1943 c. 20, 177]

**Note:** Present value for taxation of realty, insurance, and annuity for life transferred by will to testator's widow was properly determined by means of mortality tables used by insurance commissioner. *State v. Merrill*, 212 W 15, 248 NW 909.

Since repeal of provision for postponement of imposition of inheritance tax, there can be no postponement, and (9) is applicable only to cases which arose before repeal and determination of tax was postponed. *State v. Merrill*, 212 W 15, 248 NW 909.

In an estate which included 1599 of a total of 2500 shares of the capital stock of a corporation of which the decedent was president where the appraisers had valued the stock at the cash value of the tangible liquid assets of the corporation at the time of the decedent's death, no loss was to be deducted therefrom by reason of his death, and the value of the decedent's stock for inheritance purposes was the portion attributable thereto on the basis of the equivalent in money, at the time of his death, of the corporation's tangible liquid assets, plus policies held by the corporation on his life. Will of Patton, 227 W 407, 278 NW 866.

Where a will devised life estates in certain real estate with the remainder to a city for park purposes, and proceedings had been had in the county court determining the inheritance tax on the life estates, but there was no assessment of a tax on such remainder since it was exempt if the city accepted the gift and thereafter the city declined to

accept the devise, so that under the terms of the will the residuary legatees received the property, 72.15 (9) providing for the assessment of contingent estates in which proceedings for the determination of the tax have not been taken, applied as to such interest of the residuary legatee, whether the failure to appraise such interest and impose the tax previously was due to the nature of the estate or otherwise, and such interest was to be appraised and the tax thereon imposed as of the date when the contingency occurred, and not the date of the testatrix's death. [Will of Merrill, 212 W 15, distinguished.] Estate of Mitchell, 239 W 498, 1 (2d) NW 149.

72.15 (5) requires that the tax assessed on the transfer of a life estate created under a testamentary trust be paid from the principal or corpus of the trust estate without right of recoupment from the life tenant. Estate of Allen, 248 W 44, 9 NW (2d) 102.

**72.16 Unpaid taxes; proceedings to collect.** (1) If the treasurer of any county, the public administrator, or the department of taxation, shall have reason to believe that any tax is due and unpaid under sections 72.01 to 72.24, inclusive, after the refusal or neglect of any person liable therefor to pay the same, he shall notify the district attorney of the county in writing of such failure or neglect, and such district attorney, if he have probable cause to believe that such tax is due and unpaid, shall apply to the county court for a citation citing the person liable to pay such tax to appear before the court on the day specified, not more than 3 months from the date of such citation, and show cause why the tax should not be paid; or such citation may be granted on the application of the public administrator or the department of taxation. The judge of the county court upon such application and whenever it shall appear to him that any such tax, accruing under sections 72.01 to 72.24, inclusive, has not been paid as required by law, shall issue such citation, and the service of such citation and the time, manner and proof thereof, and the hearing and determination thereof, shall conform as near as may be to the provisions of the laws governing probate practice of this state, and whenever it shall appear that any such tax is due and payable, and the payment thereof cannot be enforced under the provisions of sections 72.01 to 72.24, inclusive, in said county court, the person or corporation from whom the same is due is hereby made liable to the county of the county court having jurisdiction over such estate or property for the amount of such tax, and it shall be the duty of the district attorney of said county, in the name of such county, to sue for and enforce the collection of such tax, and it is made the duty of said district attorney to appear for and act on behalf of any county treasurer, who shall be cited to appear before any county court under the provisions of sections 72.01 to 72.24, inclusive.

(2) In addition to the methods of collection provided in subsection (1), the department of taxation may proceed under section 71.36 to make collection of delinquent inheritance taxes. [1937 c. 328; 1943 c. 20]

**72.17 Special administration.** (1) PUBLIC ADMINISTRATOR. When no application for administration of the estate of any deceased person is made within sixty days after the demise of such person, and such estate appears to come under the provisions of the inheritance tax laws, or when administration has been completed without determining the tax, or when no tax is due, and that fact has not been found by the court, or when any certificate of survivorship or of heirship has been applied for or issued under sections 230.47 or 237.09, or when any foreign will has been recorded as provided in section 238.19, the public administrator of the proper county, or any person interested in such estate, may make application for such special or general administration as may be necessary for the purpose of the adjustment and payment of such tax, if any, or if no tax is due, for an order determining that fact. In cases arising under this and the following subsection, the public administrator, if appointed such special administrator, shall be entitled in the discretion of the court to the fees allowed by law to administrators, or to other reasonable compensation. In cases arising under this and the following subsection, the public administrator shall notify, by registered mail, the transferees of such estates in which it appears probable that a tax is due on any of such transfers and has not been determined. If proceedings to determine the tax are not instituted by such transferees within sixty days from the receipt of the registered notice of the public administrator, the public administrator shall institute such proceedings, and the costs and expenses of such special administration shall be paid by the estate in those cases in which a tax is found due; when no tax is found due, the costs and expenses of such special administration shall be paid by the county treasurer out of the inheritance tax funds in his hands, upon the certificate of the county judge.

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

(3) **DUTIES; FEES.** It shall be the duty of the public administrator, under the general supervision of the department of taxation and with the assistance of the district attorney, when required by the department of taxation or county judge, to investigate the estates of deceased persons within his county and to appear for and act in behalf of the county and state in the county court in such estates as the court may in its discretion deem necessary, and for such services the public administrator shall be entitled to 5 per centum of the gross inheritance tax as determined in each such estate, to be paid by the county treasurer out of the inheritance tax funds upon an order of the county judge, provided that the minimum fee for each such estate shall not be less than \$3, except that it shall not exceed the amount of such tax, and the maximum fee not more than \$25, but in cases of unusual difficulty, where the tax exceeds \$500, the county judge may allow the public administrator such additional compensation as he may deem just and reasonable. When the public administrator is not available, or is not qualified to act as such in any case, the court may call upon the district attorney or any attorney to act as public administrator in such case, and such acting public administrator shall be entitled to the fees above provided. Before the county judge shall sign an order for the payment of fees to such public administrator, such public administrator shall render a report to the county judge setting forth the names of estates in which he appeared in court for and in behalf of the county and state, the amount of tax determined in each estate, and the fees to which such public administrator was entitled under this section. The county judge shall attach said report to his order allowing fees of the public administrator. The public administrator shall make such report quarterly.

(4) **COUNTIES OVER TWO HUNDRED THOUSAND, PUBLIC ADMINISTRATOR.** In counties containing a population of over two hundred thousand, an assistant district attorney, compensated as otherwise provided by law, may by order of the county court be designated to take the place of and perform all the duties of the public administrator relating to the inheritance tax laws, except as provided in subsections (1) and (2). Whenever the assistant district attorney is designated as public administrator he shall receive the same fees as the public administrator in other counties, provided, however, that all such fees collected by him as public administrator shall be turned into the county treasurer. [1937 c. 354; 1943 c. 20]

**Note:** This section provides proceedings for determination of inheritance tax where deceased left no estate, no probate proceedings were brought, and life insurance was paid directly to beneficiary. 20 Atty. Gen. 153.

fees out of tax collected under sec. 4, ch. 14, Spl. S. 1937. 27 Atty. Gen. 804.

Fees of public administrator in estate pursuant to (3) are not payable until inheritance tax in estate has been determined by court. 31 Atty. Gen. 185.

Public administrators are entitled to no

**72.175 Determination of inheritance tax lien on real estate.** Any person, corporation or association owning any real estate, or having any interest therein, or lien thereon, may file a petition with the county court of the county where such real estate or any part thereof is situated for a determination of the inheritance tax, if any, which is or may be a lien upon such real estate or part thereof. Upon the filing of such petition, notice of hearing shall be given to the department of taxation and to the public administrator as provided in section 72.15. The court shall determine the tax, if any, and order the same paid. Upon payment of such tax, and the filing of the receipt with the court, or if the court finds that no tax is due, the court shall issue a certificate that such lands, described in the certificate, are free of said lien for inheritance tax. Such certificate shall, subject to the right of appeal, be conclusive and the lands therein described shall be forever free and clear of said lien and may be recorded in the office of the register of deeds, who will be entitled to the same fee as is provided for the recording of the satisfaction of a mortgage. [1943 c. 20; 1945 c. 388]

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

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

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

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

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

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

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

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

(9) On the first day of every month the county judge of every county within the state shall notify the department of taxation of the name and title of such proceedings as were instituted in the county court of such county within the prior month with respect to probate of wills, administration of estates, certificates of descent, and certificates of survivorship. Such notice shall be given on the forms prescribed by the department of taxation, and such notice shall contain such information as the department of taxation shall prescribe. [1933 c. 268; 1943 c. 20]

**Note:** Provisions of (8) are applicable to ing provisions of 208.01 (9). 19 Atty. Gen. Lutheran Mutual Aid Society, notwithstanding- 109.

**72.19 Quarterly reports of county treasurer; tax to be paid to state.** Each county treasurer shall make a report under oath, to the state treasurer, on and prior to the fifth day of January, April, July, and October of each year, of all taxes received by him under the inheritance tax laws, up to the first day of each of said months, stating for what estate and by whom and when paid. The county treasurer shall also set forth in such report the fees of the public administrator paid in each such estate, as well as expenses of collection. The form of such report shall be prescribed by the state treasurer. He shall at the same time pay the state treasurer all the taxes received by him under the inheritance tax laws and not previously paid into the state treasury, and for all such taxes collected by him and not paid into the state treasury, within the times herein required, he shall pay interest at the rate of ten per cent per annum.

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

**Note:** County is not entitled to any portion of emergency tax on property transfers imposed by sec. 4, ch. 14, Spl. S. 1937, nor of transfer tax imposed by 72.50, Stats. 27 Atty. Gen. 804. County treasurer is entitled under 72.20 to retain 7½ per cent of amount of gift tax credit applied in payment of inheritance tax. Nonretention by county treasurer of 7½ per cent of gift tax credit results in overpayment in error refundable under 20.06 (2). 31 Atty. Gen. 187.

**72.21 Expectant estates; compounding tax; agreement, filing.** The public administrator with the consent of the department of taxation, expressed in writing, is authorized to enter into an agreement with the executor, administrator, or trustee of any estate therein situate, in which remainders or expectant estates have been of such a nature or so disposed and circumstanced that the taxes therein were held not presently payable or where the interest of the legatees or devisees are not ascertainable under the provisions of 72.01 to 72.24, or whenever a tax is claimed on account of the transfer of any property of a nonresident decedent, and to compound such taxes upon such terms as may be deemed equitable and expedient and to grant discharges to said executors, administrators or trustees upon the payment of the taxes provided for in such composition, provided, however, that no such composition shall be conclusive in favor of said executors, administrators, or trustees, as against the interests of such cestui que trust as may possess either present rights of enjoyment or fixed, absolute, or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto either personally when competent or by guardian. Composition or settlement made or effected under the provisions of this section shall be executed in triplicate and one copy shall be filed in the office of the state treasurer; one copy in the office of the judge of the county court in which the tax was paid; and one copy to be delivered to the executors, administrators, or trustees, who shall be parties thereto. [1943 c. 20; 1945 c. 33]

**72.22 Receipts; copies; fee; recording.** Any person shall, upon the payment of the sum of 50 cents, be entitled to a receipt from the county treasurer of any county, or the state treasurer, or at his option to a copy of a receipt that may have been given by such county treasurer or state treasurer for the payment of any tax under 72.01 to 72.24, under the official seal of such county treasurer, or state treasurer, which receipt shall designate upon whose estate such tax shall have been paid, by whom, and whether in full of such tax. Such receipt may be recorded in the office of the register of deeds of the county in which such estate is situate in a book to be kept by him for that purpose, which shall be labeled "transfer tax." [1945 c. 33]

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

**72.24 Definitions.** The words "estate" and "property" as used in sections 72.01 to 72.24, inclusive, shall be taken to mean the real and personal property or interest thereon of the testator, intestate, grantor, bargainor, vendor or donor passing or transferred to individual legatees, devisees, heirs, next to kin, grantees, donees, vendees or successors and shall include all personal property within or without the state. The word "transfer," as used in sections 72.01 to 72.24, inclusive, shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or

future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment in the manner herein prescribed. The word "decendent," as used in sections 72.01 to 72.24, inclusive, shall include the testator, intestate, grantor, bargainor, vendor or donor. The words "county treasurer," "public administrator," and "district attorney," as used in sections 72.01 to 72.24, inclusive, shall be taken to mean the treasurer, public administrator and district attorney of the county of the county court having jurisdiction as provided in section 72.12. The words "the intestate laws of this state" as used in this chapter shall be taken to include a husband's right as tenant by the curtesy, the statutory rights and allowances to a child, the dower, homestead and other statutory rights and allowances of a widow, and any other rights acquired by contract in lieu of dower. [1943 c. 369]

**Note:** Amount due wife under marriage settlement contract held not subject to inheritance tax under law enacted when contract was fully executed. Will of Koeffler, 218 W 560, 261 NW 711.

At the time of the death of a testatrix there passed under the will to a residuary legatee such an interest in the residuum "in possession and enjoyment" as to constitute such passing a "transfer" within the definition in this section, so that such transfer was then subject to the inheritance tax although the residuary legatee died prior to the admission of the will to probate. Will of Marshall, 236 W 132, 294 NW 527.

72.26 [Repealed by 1935 c. 213 s. 6]

**72.50 Tax imposed.** In addition to the taxes imposed by sections 72.01 to 72.24, an estate tax is hereby imposed upon the transfer of all estates which are subject to an estate tax under the provisions of the United States revenue act of 1926, and amendments thereto, where the decedent at the time of his decease was a resident of this state. The amount of said estate tax shall be equal to the extent, if any, of the excess of the credit of not exceeding eighty per cent, allowable under said United States revenue act, over the aggregate amount of all estates, inheritance, transfer, legacy and succession taxes paid to any state or territory or the District of Columbia, in respect to any property in the estate of said decedent. Provided, that such estate tax hereby imposed shall in no case exceed the extent to which its payment will effect a saving or diminution in the amount of the United States estate tax payable by or out of the estate of the decedent had sections 72.50 to 72.61 not been enacted. The tax imposed herein shall be collected by the several county treasurers for the use of the state, and shall be accounted for and paid into the state treasury within the time and in the manner specified in section 72.19. [1931 c. 426; 1945 c. 33]

**72.51 When payable.** The estate tax shall be payable to the county treasurer of the county in which such estate is being probated at the same time or times at which the United States tax is payable and shall bear interest, if any, at the same rate and for the same period as such United States tax. [1931 c. 426]

**72.52 Liability.** Administrators, executors, trustees and grantees under a conveyance, made during the grantor's life and taxable hereunder, shall be liable for such taxes with interest, until the same have been paid. [1931 c. 426]

**72.53 Lien.** Said taxes and interest shall be and remain a lien on the property subject to the taxes until the same are paid. [1931 c. 426]

**72.54 Extension of time.** The county court of the county in which such estate is being probated may, for cause shown, extend the time of payment of said tax whenever the circumstances of the case require. [1931 c. 426]

**72.55 Returns; determination of tax; appeal.** It shall be the duty of the legal representative of the estate of any decedent who was a resident of this state at the time of his death and whose estate may be subject to the payment of a United States estate tax to file duplicates of the United States estate tax returns with the county court of the county in which such estate is being probated. He shall also file with such court a certificate or other evidence from the bureau of internal revenue showing the amount of the United States estate tax as computed by that department. The county court shall hear all parties desiring to be heard with respect to the amount of state estate tax and shall enter an order determining such tax and the amount thereof so due and payable. Any person in interest aggrieved by such determination shall have the same right of rehearing and appeal as is now provided for in the determination of inheritance taxes under sections 72.50 to 72.61. [1931 c. 426]

**72.56 Intent of sections 72.50 to 72.61.** It is hereby declared to be the intent and purpose of sections 72.50 to 72.61 to obtain for this state the benefit of the credit allowed under the provisions of said United States revenue act, to the extent that this state may be entitled by the provisions of said act, by imposing additional taxes and the same shall be liberally construed to effect this purpose. [1931 c. 426]

**72.57 Rules and regulations.** The department of taxation may make such rules and regulations and prepare such forms relative to the assessment and collection of the tax

provided for in sections 72.50 to 72.61 not inconsistent with law, as may be necessary to carry out the intent of these sections. [1931 c. 426; 1943 c. 20]

**72.58 Sections 72.50 to 72.61.** Sections 72.50 to 72.61 shall become void and of no effect in respect to the estates of persons who die subsequent to the effective date of the repeal of Title III of the United States revenue act of 1926, or of the provisions thereof allowing the credit of not exceeding eighty per cent. [1931 c. 426]

**72.59 Adjustments.** If the amount of tax imposed by Title III of said revenue act shall be increased or decreased as affecting an estate taxable hereunder subsequent to the payment of the tax as imposed by section 72.50, the tax imposed upon such estate hereunder shall be changed accordingly. Any additional tax shall be determined by the county court and paid within thirty days after the date of the entry of the order determining such additional tax. Any excess tax received by the state treasurer shall be refunded within thirty days after the amount thereof shall have been certified to said state treasurer by the county court. [1931 c. 426]

**72.60 Estates affected.** The provisions of sections 72.50 to 72.61 shall apply to the estates of all decedents dying after the date when these sections take effect and shall also apply to the estate of any decedent with respect to which the United States estate tax has not been paid at the time these sections take effect. [1931 c. 426]

**72.61 Provisions applicable.** The provisions of chapter 72, relating to the tax on inheritances and transfers, shall apply to the taxes imposed by sections 72.50 to 72.61 in so far as the same are applicable and not in conflict with the provisions hereof. [1931 c. 426]

[72.72 Appropriation for administering emergency taxes. (Ch. 408, Laws 1937; Spl. S. 1937 c. 14) Omitted because obsolete.]

**72.74 Emergency tax on inheritances.** (2) In addition to the taxes imposed by sections 72.01 to 72.24 and 72.50 to 72.61, an emergency tax for relief purposes, rehabilitation of returning veterans of World War II, construction and improvements at state institutions and other state property and for post-war public works projects to relieve post-war unemployment is hereby imposed upon all transfers of property which are taxable under the provisions of said sections and which are made subsequent to March 27, 1935\* and prior to July 1, 1947 which said tax shall be equal to 30 per cent of the tax imposed by said sections.

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

(4) If any subsection of this section or portion thereof, or its application to any person or circumstance shall be held unconstitutional, such decision shall not affect the constitutionality of any other subsection of this section or portion thereof, or its application to other persons or circumstances.

(5) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax herein imposed upon any ground whatever, but the aggrieved taxpayer shall pay the tax as and when due and if paid under protest at any time within one year from the date of such payment sue the state treasurer in an action at law to recover the tax so paid, with interest at 6 per cent thereon, from the date of payment. If it is finally determined that said tax, or any part thereof, was wrongfully collected for any reason, it shall be the duty of the state treasurer then in office to pay the amount of such tax adjudged to have been wrongfully collected, together with interest thereon at the rate of 6 per cent per annum out of the general fund of the state to the taxpayer entitled thereto. A separate suit need not be filed for each separate payment made by any taxpayer, but a recovery may be had in one suit for as many payments as may have been made, and which are not barred by the limitation of one year herein imposed. [1935 c. 15 s. 3; 1935 c. 490 s. 4; 1937 c. 32; Spl. S. 1937 c. 14 s. 4; 1941 c. 63 s. 1c; 1943 c. 367 s. 1; 1943 c. 490 s. 14; 1945 c. 159, 333]

**Revisor's Note, 1943:** This is the emergency inheritance tax chapter. Originally ch. 15, inheritance tax. It belongs with the Laws 1935, contained income and other taxes

**\*Revisor's Note:** March 27, 1935 is the publication date of the original act imposing an emergency inheritance tax (sec. 3, ch. 15, laws of 1935). The rate then imposed upon all transfers of property taxable under ch. 72, Stats., and "made subsequent to the enactment hereof and prior to July 1, 1937" was "25 per cent of the excess of \$100 of tax imposed by said chapter." By ch. 14, Spl. S. 1937, published Oct. 20, 1937, the rate was changed to 30 per cent of the tax imposed by ch. 72. Many other amendments have been made to the emergency inheritance tax law; see history note to 72.74.

as well as the inheritance tax. The emergency tax laws (ch. 363, Laws 1933 and ch. 15 and 505, Laws 1935) have never been given statute section numbers. The legislature never indicated, according to "Joint Rule 7, Forms of Bills, 4", that these acts were to be printed in the Wisconsin Statutes. Accordingly, they were at first omitted from the Statutes. Confusion and complaints followed. As a partial solution of the problem, the acts were printed in the Wisconsin Statutes of 1937 and in later editions, under the bracketed section numbers 72.75, 71.50 and 71.60. The taxing portions of these emergency tax acts are now given statute section numbers. That does not affect in any way any other parts of those acts. Those other parts may be found by reference to the session laws or to the 1941 and earlier editions of the statutes.

**72.75 Emergency gift tax.** (1) To provide revenue for the rehabilitation of returning veterans of World War II, construction and improvements at state institutions and other state property, and post-war public works projects to relieve post-war unemployment, an emergency tax is imposed upon transfers of property, real, personal or mixed, or any interests therein or income therefrom, in trust or otherwise, to any person, association or corporation, which are made subsequent to July 9, 1933\* and prior to July 1, 1947, in the following cases, except as hereinafter provided.

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

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

(c) From and after January 1, 1944, whenever any person shall exercise or release a power of appointment derived from any disposition of property, whether heretofore or hereafter made, such exercise or release, whether in whole or in part, shall be deemed a transfer of property taxable in the same manner as though the property to which such power of appointment relates belonged absolutely to the person possessing such power. For the purpose of this subsection the term "power of appointment," means any power to appoint exercisable by any person either alone or in conjunction with any other person.

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

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

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

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

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

\*Revisor's Note: July 9, 1933 is the effective date of the original act imposing an emergency gift tax (sec. 4, ch. 363, laws of 1933). The act has been frequently extended and amended; see history note to 72.75.

not upon any earnings or income of said property produced after the gift, and such earnings or income shall not be exempt from income tax.

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

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

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

(3) When the value of the transfers within the same calendar year shall exceed the exemption specified in subsection (6) and shall not exceed \$25,000 the tax thereon shall be:

(a) Two per centum where the donee shall be the husband, wife, lineal issue, lineal ancestor of the donor or any child adopted by the donor as such in conformity with the laws of this state, or any child to whom such donor for not less than 10 years prior to the date of such transfer stood in the mutually acknowledged relation of parent; provided, however, such relationship began at or before the child's fifteenth birthday and was continuous for said 10 years thereafter, or any lineal issue of such adopted or mutually acknowledged child.

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

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

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

(4) The rates in subsection (3) are for convenience termed the "primary rates." When the value of the gift exceeds \$25,000 the rates of tax on such excess shall be as follows:

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

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

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

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

(e) The tax, however, at the rates specified by subsections (3) and (4) shall not exceed 15 per cent of the value of such gift.

(f) In addition to the tax imposed at the rates hereinbefore specified in subsections (3) and (4) of this section, an emergency tax is hereby imposed upon all transfers of property by gift which are taxable under the provisions of this section, which said tax shall be equal to 30 per cent of the tax imposed at the rates hereinbefore specified in said subsections.

(5) The following transfers are exempt from such tax:

(a) All property transferred to municipal corporations within the state for strictly county, town or municipal purposes, or to corporations or voluntary associations of the state, organized under its laws, solely for religious, humane, charitable or educational purposes, and to any national organization of veterans of the armed forces of the United States or subordinate unit thereof, which shall use such property exclusively for the purposes of their organization within the state, and transfers to banks or trust companies as trustees in trust exclusively for public, religious, humane, charitable, educational or municipal purposes in this state shall be exempt.

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

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

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

(b) In addition to the exemption provided by paragraph (a) of this subsection, property of the clear value of \$15,000 transferred by the donor to his wife, but such additional exemption shall be allowed but once. The clear value of property transferred by a donor to his wife, in excess of the \$1,000 annual exemption provided by said par-

agraph (a), shall be aggregated from year to year and the additional exemption applied thereto until such clear value equals such \$15,000 exemption.

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

(d) In addition to the exemption provided by paragraph (a) of this subsection, property of the clear value of \$2,000 transferred by the donor to a lineal descendant, but such additional exemption shall be allowed but once. The clear value of property transferred by a donor to a lineal descendant in excess of the \$1,000 exemption provided by paragraph (a), shall be aggregated from year to year until such clear value equals such \$2,000 exemption.

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

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

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

(b) On or before April 15 in each year the donor and the donee of any transfers during the preceding year shall, if the aggregate value of such transfers exceed \$1,000, report such transfers and the tax thereon to the assessor of incomes of the assessment district in which such donor and such donee file their respective income tax returns except that if the donor is a nonresident, such reports shall be filed with the assessor of incomes of the district in which the donee resides, and that if the donee is a nonresident, such donee shall report such transfers to the assessor of incomes of the district in which the donor resides. If both the donor and donee are nonresidents, or if either of them is a corporation, such reports shall be made direct to the department of taxation. Such reports shall be made on the forms prescribed by the department of taxation, and shall disclose such information as is required thereon.

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

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

from the assessment of additional tax the rate of interest shall be 6 per cent until 30 days after such appeal is finally determined, and thereafter it shall be 10 per cent until the tax is paid.

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

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

(g) Whenever, in the judgment of the department of taxation, it may be necessary, the department of taxation may require any person, by notice served upon him by registered mail, to make a return or render under oath such statements, or keep such records, as the department of taxation deems sufficient to show whether or not such person is liable for a tax under this section. If any person required under said section to file a return fails to file such return or keep any records, or supply any information within the time and in the manner prescribed by law or by regulation made under the authority thereof, or upon notice by the department of taxation to do so, an additional tax equal to 25 per cent of the amount of tax due shall be assessed and collected in the same manner, at the same time, and subject to the same conditions as apply to the gift tax imposed by said sections.

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

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

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

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

(l) Nothing in this section shall in anywise be construed so that the provisions shall conflict, limit or modify in any respect the provisions of the inheritance, estates or income tax laws.

(m) Whenever any such transfer shall be made of stocks, bonds or other securities issued by any corporation, joint stock company, partnership or association, domestic or foreign, owning property or doing business in this state, or any interest therein, or in the assets thereof, all inventories, books, papers, income tax returns and records thereof shall be competent evidence in any court and shall be accessible to the department of taxation or its representatives for the purpose of ascertaining the true value of such stocks, bonds or other interests; and the department may order the production of any such inventories, books, papers, records and income tax returns, and may require the attendance and examination of any officer or employe of any such corporation, joint stock company, partnership or association. [1933 c. 363 s. 4; 1935 c. 15 s. 7; 1937 c. 32, 263, 302, 306, 307, 308; Spl. S. 1937 c. 14 s. 3, 4; 1939 c. 412 s. 4; 1941 c. 63 s. 4; 1943 c. 20; 1943 c. 367 s. 3; 1943 c. 369 s. 11, 12; 1943 c. 490 s. 16; 1943 c. 513; 1943 c. 553 s. 15; 1945 c. 159, 309, 333, 472, 569]

**Note:** The changes made in this section by ch. 309, laws of 1945, apply "to all gifts made on or after January 1, 1945" (see sec. 5 of said act).

Ch. 363, Laws 1933, declaring that there "is levied an emergency tax for relief purposes upon the net income of all persons received in 1932, did not authorize an assessment of such emergency tax upon the 1932 income of a person who was a resident of the state from January 1 to November 29, 1932, but who during 1933 was not a resident of the state, conducted no business therein, and received no income from property located therein. *Messinger v. Tax Commission*, 222 W 156, 267 NW 535.

Where a Wisconsin resident, owning government bonds in Wisconsin, desired to create a trust with them, or with their proceeds, for the benefit of other Wisconsin residents, to be administered by Wisconsin trustees, and accomplished his purpose by turning in the called bonds and making collection thereof in silver dollars in Illinois, where he went with his trustees and received the silver dollars and there delivered them to the trustees, and the trustees then promptly exchanged the silver dollars for bank credits, purchased securities, and proceeded with the administration of the trust in Wisconsin—(a) Wisconsin had jurisdiction to tax as a gift the exchange or transfer effected, the donor being a Wisconsin resident; (b) the silver dollars had a situs for the purpose of taxation in Wisconsin; (c) the gift in question was not within sec. 4 (1) (c) of ch. 363, Laws 1933, excepting a gift of "any tangible personal property of a resident donor when such property is located without this state." The gift was not immune on the ground that a state has no power to tax the national currency, the gift tax not being a tax on property. *Van Dyke v. Tax Comm.*, 235 W 128, 292 NW 313.

Under a trust deed by which the owner of securities transferred them irrevocably to trustees, under which his wife as a beneficiary was not entitled to receive any income from the trust except in the absolute discretion of the other trustees, one of whom was the settlor, and was not entitled to receive any of the principal except on the approval of the settlor's son, who was a beneficiary, or of the other trustees, there was no more than an "incompleted gift" to the wife, which was not presently taxable to her as a gift under sec. 4, ch. 363, Laws 1933. *Ingram v. State*, 236 W 449, 295 NW 749.

Intangible personal property ordinarily has a situs for the purpose of taxation in the jurisdiction of the domicile of the owner, and, although intangibles may acquire an actual situs in a jurisdiction other than that of

their owner, their mere physical presence in a jurisdiction is not sufficient to give them a taxable situs in a jurisdiction other than that of their owner. *Ingram v. State*, 236 W 449, 295 NW 749.

When the entire benefits, both corpus and accumulated income, of a gift in trust are to be distributed to one person on the termination of the trust, the value of the gift, for the purpose of the gift tax, is properly computed (under sec. 4, ch. 363, Laws 1933, as amended) at the present value of the total future estate or gift, which present value is equal to the value of the property originally transferred in trust, in this case the sum of \$25,000, as against the contention that such method of computation taxes the income produced after the gift as well as the principal of the gift. *Miller v. Department of Taxation*, 238 W 287, 299 NW 28.

Under sec. 4 (2) (a) of ch. 363, Laws 1933, a transfer of the character described is made taxable as a gift, and a donative intent need not be established as a basis for imposing the gift tax thereon. Unimpeached and uncontradicted evidence demonstrating the incorrectness of the assessor's valuation of property for purposes of the gift tax would rebut the presumption of correctness attached by law to the valuation, and the disregard of such evidence by the board of review or by the tax commission would be so unreasonable and arbitrary as to constitute jurisdictional error and not the exercise of an honest judgment or discretion. *Connor v. State*, 240 W 44, 2 (2d) NW 852.

An income tax applicable to past-earned income is valid, but a gift tax cannot constitutionally be made applicable to a completed gift made prior to the enactment of the tax act. *Miller v. Department of Taxation*, 241 W 615, 6 NW (2d) 327.

The 25 per cent additional gift tax imposed by par. (e) of sub. (3), sec. 4, ch. 363, Laws 1933, in respect to gifts of a value not exceeding \$25,000 where the tax at the rates specified in pars. (a) to (d) exceeded a certain amount, did not apply to the rates prescribed in sub. (4) for taxing in respect to values in excess of \$25,000 at a specified number of times the "primary rates." *Miller v. Department of Taxation*, 241 W 615, 6 NW (2d) 327.

Lands conveyed in trust for use of national guard company are not subject to Wisconsin gift tax statutes. 26 Atty. Gen. 221.

Changes of exemptions and rate of tax in gift tax law effected by ch. 308, Laws 1937, and ch. 14, Spl. S. 1937, are applicable to all gifts made during year 1937. 27 Atty. Gen. 120.