

CHAPTER 72

INHERITANCE, ESTATE AND GIFT TAX

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Note: Chapter 72, is revised by 1987 Wisconsin Act 27 and later Acts of the 1987-88 Legislature, effective 1-1-92, to be Chapter 72, Estate Tax. It is printed, as revised, in small print following this chapter. See ss. 1481m to 1541m of Act 27 for detail.

SUBCHAPTER I

GENERAL PROVISIONS

72.01 Definitions. In this chapter, unless otherwise specified:

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

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

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

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

(7) "Decedent" means the deceased person.

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

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

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

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

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

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

(13) "The intestate laws of this state" include statutory rights and allowances to a child and to a surviving spouse and

any other rights of a surviving spouse acquired by contract in lieu of any statutory rights.

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

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

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

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

(17) "Power of appointment" means any general power to appoint, as defined by section 2041 (relating to estate taxes) or 2514 (relating to gift taxes) of the internal revenue code, as amended to December 31, 1987. Amendments to the internal revenue code enacted after December 31, 1987, do not apply to this subsection with respect to taxable year 1988 and thereafter.

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

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

History: 1971 c. 310; 1973 c. 90; 1977 c. 187 s. 135; 1977 c. 418; 1977 c. 449 ss. 181, 497; 1981 c. 20, 317; 1983 a. 27, 186, 189, 212; 1985 a. 29, 261; 1987 a. 27, 399.

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87-88 Wis. Stats. 1650

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

History: 1971 c. 310.

72.05 Rules and forms. The department may make rules and prescribe forms required to compute, assess and collect taxes imposed by this chapter.

History: 1971 c. 310.

72.06 Confidentiality of tax returns. Sections 71.78 (1) and (4) to (9) and 71.83 (2) (a) 3 apply to any information obtained from any person by the department on an inheritance or estate tax return, report, schedule, exhibit or other document or from an audit report pertaining to the tax return.

History: 1979 c. 139, 221; 1987 a. 312.

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

History: 1971 c. 310.

SUBCHAPTER II**INHERITANCE TAX**

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

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

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

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

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

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

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

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

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

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

(3) TRANSFER OF ALLOWANCES TO FAMILY. When the transfer is made under subch. II of ch. 861, except s. 861.20, to the extent not subject to income tax.

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

(b) *Transfer to take effect after death.* When a transfer is made without adequate and full consideration in money or money's worth and is intended to take effect in possession or enjoyment at or after the death of the transferor, including any transfer where the transferor has retained for his life or for any period not ending before his death:

1. The possession or enjoyment of, or the right to the income from, or to economic benefit from, the property; or

2. The right, either alone or in conjunction with any person, to alter, amend, revoke or terminate the transfer or to designate the beneficiary who shall possess or enjoy the property, or the income, or economic benefit from it.

(c) *Death benefits.* 1. Benefits paid to a beneficiary under an employe benefit plan are taxable under this subchapter except to the extent that the proportionate share resulting from the employer's contribution would be excludable from the gross estate of the decedent under section 2039 of the internal revenue code as amended to December 31, 1987. Amendments to the internal revenue code enacted after December 31, 1987, do not apply to this subdivision with respect to taxable year 1988 and thereafter. This subsection applies whether or not there is a requirement for filing a federal estate tax return.

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

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

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

(5) TRANSFER UNDER POWER OF APPOINTMENT. When the transfer results from the possession, exercise or release of a power of appointment, including the exercise of a power of appointment by the creation of another power of appointment, in a manner which is taxable under section 2041 of the internal revenue code, as defined in s. 71.01 (6).

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

(b) *Joint tenancy exclusion.* When property is held in the names of 2 or more persons with the right of survivorship but not as survivorship marital property, the following shall be subtracted as provided in par. (c):

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

2. Money which is invested or deposited in a financial organization, as defined in s. 71.04 (8) (a) and the clear market value of property which is acquired or placed in the names of 2 or more persons with the right of survivorship if the establishment of such survivorship interest is not subject to gift tax under subch. IV because it is an incomplete transfer, upon the death of one such person, an amount equal to the property's clear market value multiplied by a fraction, the numerator of which is the money or money's worth contributed by the surviving tenant or tenants and the denominator of which is the money or money's worth contributed by all joint tenants including the decedent.

(c) *Application of exclusion.* The amount determined in par. (b) shall be subtracted from the amount determined under par. (a) prior to application of the tax rates under s.

72.18. The tax rates shall be applied to the balance of property, the transfer of which is taxable under this subchapter, beginning at the tax rate applicable to the bracket in which the exemptions end.

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

History: 1971 c. 310; 1973 c. 90; 1975 c. 222, 331; 1977 c. 418; 1979 c. 1, 176; 1981 c. 20, 93, 317; 1983 a. 27; 1983 a. 189 s. 329 (10); 1983 a. 212; 1983 a. 544 s. 47 (1); 1985 a. 29 ss. 1398, 1398m, 3202 (46) (b); 1985 a. 37 s. 187; 1985 a. 261; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 399.

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

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

Personal services can serve as consideration "in money's worth" under (6) (b) 2. In re Estate of Kersten, 71 W (2d) 757, 239 NW (2d) 86.

Fact that title to trust assets was vested in trustees and not in settlor's widow mitigated strongly against finding of absolute fee in widow. In Matter of Estate of Barr, 78 W (2d) 254, 253 NW (2d) 901.

Taxation of employe benefit plans under 1967 stats. discussed. In Matter of Estate of Puchner, 78 W (2d) 525, 254 NW (2d) 722.

When joint contractual will is not revoked, property passes by will even though contract would be separately enforceable claim against estate. In Matter of Estate of Jacobs, 92 W (2d) 266, 284 NW (2d) 638 (1979).

See note to 72.14, citing In Matter of Estate of Laev, 115 W (2d) 168, 340 NW (2d) 223 (Ct. App. 1983).

State's power to levy inheritance taxes on transfer of trust assets upon death of settlor is based solely on domicile of settlor and does not depend upon situs of trust or trust's nexus with state. In Matter of Estate of Parsons, 122 W (2d) 186, 361 NW (2d) 687 (1985).

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

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

The taxation of joint tenancy property enacted by Ch. 222, laws of 1975. Boykoff, 1976 WBB 5.

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

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

History: 1971 c. 310.

Beneficiary's option rights were irrelevant in valuating inherited property. In Matter of Estate of Irish, 89 W (2d) 148, 277 NW (2d) 872 (1979).

72.14 Deductions. (1) **EXPENDITURES BY A PERSONAL REPRESENTATIVE, SPECIAL ADMINISTRATOR OR CERTAIN DISTRIBUTEES OUT OF CERTAIN ASSETS IN HIS POSSESSION.** Deductions for the following expenditures made by the personal representative or special administrator out of the assets of the decedent in his possession or advanced or paid by a distributee of any assets in his possession are allowed:

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

(b) Reasonable funeral and burial expenses.

(c) Expenses of administration incurred because of the decedent's death and not claimed under ch. 71, including but not limited to personal representative fees, guardian ad litem fees, court filing fees, personal representative bond and similar expenses but not including such expenses as inheritance and estate taxes paid to any other state, territory, district or country; expenses of care, maintenance or repair of real property or tangible personal property incurred or accrued after the decedent's death; interest on obligations of the decedent or the estate incurred or accrued after the decedent's death; and expenses incurred or accrued in the sale of property unless the proceeds are necessary to pay other allowable claims or deductions under this subsection.

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

(e) The estate tax as finally determined by the U.S. government.

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

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

(4) **INSTALMENT PAYMENTS.** Interest attributable to payments under s. 72.22 (4) is not deductible under this section in the estate of the decedent in which an election to pay under s. 72.22 (4) was made.

History: 1971 c. 310; 1975 c. 331; 1979 c. 1; 1987 a. 27.

Estate's sales expenses may not be claimed as administrative expense deductions under (1) (c) when they have already been used as a setoff against capital gains tax owed by estate. In Matter of Estate of Haasc, 81 W (2d) 705, 260 NW (2d) 809.

Where divorce judgment required decedent to maintain \$200,000 of life insurance payable to children, proceeds constituted deductible debt to decedent's taxable estate. In Matter of Estate of Laev, 115 W (2d) 168, 340 NW (2d) 223 (Ct. App. 1983).

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

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

2. Corporations, trusts, voluntary associations or foundations organized and operated exclusively for religious, humane, charitable, scientific or educational purposes, except that a transfer to a cemetery is exempt under this subdivision

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only if that transfer is not specifically for the benefit of the decedent or any other designated person;

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

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

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

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

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

(3) In the event of a disclaimer under s. 853.40, the transfer from the decedent shall be taxed to the distributee taking as a result of the disclaimer.

(4) No tax is imposed on the transfer of the first \$10,000 of the aggregated clear market value of household furniture, furnishings and appliances and other tangible personal property, except money, otherwise taxable under s. 72.12. This exception shall be in addition to all other exemptions and allowances.

(5) Any transfer to a surviving spouse is exempt from the tax imposed by this subchapter.

(6) No tax is imposed on the transfer of property from a decedent who was missing in action during the Vietnam era and declared dead by the federal government. Persons who have paid inheritance taxes on a transfer from such a person may within 6 years of July 20, 1985, file with the claims board a claim for a refund. That claim shall set forth specifically the basis of the claim and shall include a document or documents showing that the person from whom the property is transferred fulfills the requirements under this subsection. This claim, if valid, shall be paid under s. 16.007 (6) (b) 2.

History: 1971 c. 310; 1975 c. 331; 1977 c. 309, 418; 1979 c. 1; 1981 c. 93; 1985 a. 29; 1987 a. 27.

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

Trusts are not necessarily disqualified under this section because relatives of settlor may become beneficiaries. In *Matter of Estate of Frautschy*, 84 W (2d) 644, 267 NW (2d) 300 (1978).

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

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

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

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

(4) Class D consists of all distributees in any other degree of collateral consanguinity to the decedent than stated above, strangers in blood and other persons, but does not include a surviving spouse.

History: 1971 c. 310; 1977 c. 418; 1981 c. 93; 1983 a. 186.

72.17 Exemptions. Exemptions from the tax, to be applied against the lowest bracket or brackets, are allowed as follows:

(1) To class A distributees, property of a clear market value of \$10,000 in respect to transfers because of deaths occurring before April 13, 1984; property of a clear market value of \$25,000 in respect to transfers because of deaths occurring on April 13, 1984, and thereafter to June 30, 1985; and property of a clear market value of \$50,000 in respect to transfers because of deaths occurring on July 1, 1985, and thereafter;

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

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

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

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

(b) To the cemetery in which the deceased is buried, property of a clear market value of \$500 if that transfer is specifically for the benefit of the decedent or of any other designated person and if that cemetery is not operated for profit.

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

History: 1971 c. 310; 1979 c. 1; 1981 c. 93; 1983 a. 194; 1987 a. 27.

Exemption under this section applies against the lowest bracket of tax rate. In *Matter of Estate of Walker*, 75 W (2d) 93, 248 NW (2d) 410.

72.18 Rates. When property is transferred by reason of a death to or for the use of a distributee, a tax is imposed which shall be reduced by 20% for transfers because of deaths occurring in 1988, by 40% for transfers because of deaths occurring in 1989, by 60% for transfers because of deaths occurring in 1990, by 80% for transfers because of deaths occurring in 1991 and by 100% for transfers because of deaths occurring in 1992 and thereafter at the following rates:

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

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

(3) Class C distributees are taxed upon the balance of the first \$25,000 over the exemption at 7.5%; upon property

which exceeds \$25,000 and does not exceed \$50,000, at 15%; and upon property which exceeds \$50,000, at 20%.

(4) Class D distributees are taxed upon the balance of the first \$25,000 over the exemption at 10%; and upon property which exceeds \$25,000, at 20%.

History: 1971 c. 310; 1973 c. 90; 1981 c. 93; 1985 a. 29; 1987 a. 27, 92.

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

History: 1971 c. 310.

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

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

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

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

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

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

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

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

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

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

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

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

History: 1971 c. 310.

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

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

(3) This section does not apply with respect to taxes due under this subchapter on transfers to a distributee who has elected to pay the taxes under s. 72.22 (4).

History: 1971 c. 310; 1979 c. 1.

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

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

(3) **PAYMENT.** Payments must be made to the department. Except as provided in sub. (4), full payment shall accompany the inheritance tax return. If a prepayment was made, any additional tax shown owing on the return, as filed, shall accompany the return.

(4) **INSTALMENT PAYMENTS.** (a) Whether or not there is a federal estate tax liability, in lieu of full payment, payment may be made according to an equal payment schedule over a period not to exceed 15 years from the decedent's date of death, if the estate would be authorized to pay federal estate taxes under section 6166 of the internal revenue code as amended to December 31, 1987. Amendments to the internal revenue code enacted after December 31, 1987, do not apply to this paragraph with respect to taxable year 1988 and thereafter. If an election is made under this subsection, the election shall apply only to the portion of the tax payable by a distributee which is determined by dividing the value of property received by a distributee which qualifies an estate for the election under the internal revenue code by the value of all property received by the distributee. A distributee electing to pay under this subsection may subsequently pay part or all of the remaining tax plus interest at the time any scheduled payment is due under this subsection. Interest on instalment payments under this subsection shall be computed under s. 72.23 at 12% per year.

(b) If the tax due under this subchapter and subch. III has not been finally determined, payment of an estimated tax may be made under this subsection on the same basis as a determined tax. Upon final determination of the tax, the difference between the estimated and determined tax and interest may be equally allocated to the remaining payment periods.

(c) Any distributee electing to pay under this subsection shall, within one year of the decedent's date of death, file written notice of the election with the department and with the person required to file the inheritance tax return. Any distributee who fails to give notice under this paragraph shall make full payment as required under sub. (3).

(d) Upon the filing of a notice under par. (c), distributees of real estate shall provide the department a certified copy of a lien for unpaid taxes and interest on the property to secure payment, recorded in the office of the register of deeds of the county in which the property is located. Distributees of personal property, upon the filing of a notice under par. (c), may either provide a lien or provide the department a financial guarantee bond equaling the estimated tax and interest elected to be paid under this subsection to secure payment if the tax has not been determined. Upon determination of the tax, distributees of personal property shall provide a lien or provide a financial guarantee bond sufficient to secure payment of the tax and interest or pay the department the excess over the amount of tax and interest secured by the bond. The department may require security to cover the tax with a lien affecting only part of the property if there is sufficient security to secure payment of the tax. Any distributee who fails to provide the security required under this

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paragraph, or who disposes of one-third or more of the property on which the tax is secured under this paragraph, shall make full payment as required under sub. (3).

(e) Upon the failure of any distributee to make a scheduled payment agreed to under par. (a), upon the distributee's death or if the security provided under par. (d) is jeopardized, the department may proceed to collect the payment or the entire unpaid balance of the taxes, costs and interest.

History: 1971 c. 310; 1973 c. 90; 1979 c. 1, 34, 221; 1981 c. 20, 317; 1983 a. 27, 212, 248; 1985 a. 29, 261; 1987 a. 27, 399.

72.23 Interest. (1) RATE. If the tax imposed by this subchapter is not paid within one year of the decedent's date of death, interest is due and payable at the rate of 12% per year from date of death. In computing time under this section, the day of death is excluded.

(2) **INTEREST MAY BE WAIVED.** The department or circuit court may waive interest on any additional tax arising from the discovery of property which was omitted in the original determination of tax. This subsection applies only where due diligence has been exercised in marshaling the assets.

History: 1971 c. 310; 1973 c. 90; 1977 c. 29; 1977 c. 449 s. 497; 1981 c. 20.

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

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

72.25 Release or transfer of lien. Until the tax imposed upon all transfers to a distributee under this subchapter is paid it is a lien upon the property transferred to that distributee except:

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

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

History: 1971 c. 310; 1973 c. 90; 1983 a. 248; 1985 a. 29.

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

History: 1971 c. 310.

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

(2) **NONRESIDENTS.** The circuit court of Dane county has jurisdiction to hear and determine all questions relating to the

determination and adjustment of the tax imposed by this subchapter, if a tax appears due because of the death of a nonresident decedent and in which it does not otherwise appear necessary for regular administration. If a nonresident dies possessed of real or tangible personal property located within this state, the circuit court of the county in which the property is located shall have concurrent jurisdiction with the circuit court for Dane county.

History: 1971 c. 310; 1973 c. 90; 1977 c. 449.

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

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

(c) **Future or limited estates. 1. Method of valuation. a.** Determination of the value of every future or limited estate, income, interest or annuity dependent upon any life or lives in being shall be based on tables designated by the department. These tables shall be those used by the internal revenue service for like computations.

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

(d) **Estate for life or years.** Where an estate for life or years can be divested by the act or omission of the distributee, it shall be valued as if there were no possibility of such divesting, subject to disclaimer under s. 853.40.

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

2. **Other power.** If the power is excluded from the definition of a power of appointment, then the remainder interest subject to the power is taxed in the estate of the donor of the power as if the power had been exercised in favor of the person in the restricted class in a manner that will result in the imposition of the largest amount of tax. Upon the exercise, failure to exercise or release of a power by the donee of the power, either upon his death or during his lifetime, the tax in the estate of the donor of the power shall be redetermined to accord with the ultimate devolution of the property. Any excess tax determined to have been paid shall, upon application to the department, be refunded with interest at the legal rate to the payor or other person entitled thereto.

(2) **COMPOSITION AGREEMENTS. (a)** The department may enter into an agreement with the personal representative,

special administrator, trustee or distributee of any property where:

1. Remainders, expectant estates or powers of appointment are of such a nature that the tax on their transfer is not ascertainable under this chapter; or
2. The interest of a distributee or trust beneficiary is not ascertainable under this subchapter; or
3. A tax is claimed on the transfer of property of a nonresident decedent.

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

History: 1971 c. 310; 1973 c. 90; 1977 c. 309, 418; 1977 c. 449 s. 183, 497; 1979 c. 110; 1987 a. 247.

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

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

1. Retaining a sufficient portion to pay any tax, interest and penalty, imposed under subchs. II and III; or
2. Obtaining the written consent of the department. Whenever the department is satisfied that the collection of any tax on a transfer will not be jeopardized, it may issue a certificate consenting to the transfer upon the advance payment of \$5.

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

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

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

1. Retaining a sufficient portion to pay any tax, interest and penalty imposed under subchs. II and III; or
2. Obtaining the written consent of the department. Whenever the department is satisfied that collection of any tax on a transfer will not be jeopardized, it may issue a certificate consenting to the transfer upon the advance payment of \$5.

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

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

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

History: 1971 c. 310; 1981 c. 93; 1985 a. 120.

72.30 Determination of tax. (1) FILING. (a) *General rule.* Except as provided in par. (b), the personal representative,

special administrator, trustee, distributee or other person interested shall prepare the inheritance tax return, compute the tax, if any, due under this subchapter and file the original with the department.

(b) *Exception.* No inheritance tax return is required to be filed if no federal estate tax return is required to be filed in regard to the transfer of property and if for each distributee the exemptions that may be properly claimed under ss. 72.15 and 72.17 clearly exceed the gross distributive share of the estate.

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

- (a) The date on which the return was filed;
- (b) A list of all property received by that distributee;
- (c) A summary of the value of each item listed in par. (b); and
- (d) The total tax resulting from the transfer of all items listed in par. (b).

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

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

(bm) The court and probate registrar shall accept as presumptive proof the determination of the distributive share and the applicable exemptions submitted by the personal representative, special administrator, trustee, distributee or other interested person. The department of revenue and other interested parties may petition the court to rebut this presumptive proof.

(c) Upon determination of the value of the property and the tax, the department shall issue a dated certificate showing the amount of tax and any interest and penalty, or showing the amount of tax and stating that payment will be made under s. 72.22 (4).

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

(e) Unless sub. (1) (b) applies, no circuit court proceeding held for the transfer of property of a decedent shall be completed until the original certificate determining the tax or determining no tax, together with proof that any tax has been paid, is filed with the court and, if an election has been made under s. 72.22 (4), until proof is filed with the court or probate registrar that security required under s. 72.22 (4) (d) has been filed with the department.

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

(5) PETITION FOR ANCILLARY PROBATE OR ANCILLARY ADMINISTRATION. Every petition for ancillary probate or ancillary administration shall include a true statement of all the

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decedent's property in this state and its value. Upon presentation of the petition, the circuit court shall order the personal representative, special administrator, trustee or distributee to proceed under subs. (1) and (2).

(6) **DETERMINATIONS PRIOR TO 1947.** Where the court has made, prior to January 1, 1947, a determination that no tax was due or that the tax has been determined and paid, the determination is conclusive with respect to the property which was before the court whether or not the required notice of hearing to determine the tax was given properly.

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

History: 1971 c. 310; 1973 c. 90; 1975 c. 41 s. 52; 1975 c. 331; 1977 c. 449 s. 497; 1979 c. 1; 1985 a. 278; 1987 a. 312 s. 17.

Sub. (4) did not bar court review of tax dispute which arose more than 6 months after tax certificate was issued. Department must issue certificate under (3) (c) each time tax determination is made on amended return. In *Matter of Estate of Halsted*, 116 W (2d) 23, 341 NW (2d) 389 (1983).

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

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

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

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

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

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

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

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

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

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

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

NOTE: The section title is repealed and subs. (1) and (2) are renumbered 867.05 (5) and (6), by 1987 Wis. Act 27, eff. 1-1-92.

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

(2) If the amount of the federal estate tax initially paid is subsequently increased or decreased the person entitled to the refund or liable for the additional tax under subch. II or III shall, within 30 days:

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

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

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

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

History: 1971 c. 310; 1975 c. 41 s. 52; 1975 c. 331; 1979 c. 1; 1985 a. 278.

72.34 Inheritance tax counsel; investigations. (1) (a) The department shall supervise the administration of the tax imposed by this subchapter and shall investigate and cause to be investigated the administration of this tax and the transfers to which these laws apply. The department shall make and file in its offices reports of such investigations and specific information and facts requiring special consideration by the department of justice.

(b) Whenever necessary, the department of revenue may employ accountants, appraisers or other special assistants including counsel in appraising or determining the value of property transferred. Upon certification of the department, the state treasurer shall issue payment to such persons.

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

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

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

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

(6) (a) Every person, order or society transacting life, accident, fraternal, mutual benefit or death benefit insurance business within this state, who shall pay any insurance or death benefit in excess of \$1,500 upon the death of a resident

of this state, shall give notice of such payment to the department within 10 days from the date of such payment.

(b) Every person liable for paying benefits to the estate or a beneficiary of a deceased employe or former employe in the form of an annuity, bonus, pension or other benefit under a retirement, deferred compensation or profit-sharing plan taxable under this subchapter, directly or through a trust or fund created by the employer for such purpose, shall give notice of such obligation to the department within 30 days following the date of payment, or the date of the initial payment if more than one payment is forthcoming, to the estate or any beneficiary of such employe or former employe.

History: 1971 c. 310; 1973 c. 90; 1977 c. 29, 449.

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

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

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

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

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

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

- (a) The agreement;
- (b) The record of the panel's proceedings; and
- (c) The panel's determination.

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

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

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

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

SUBCHAPTER III

ESTATE TAX

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

History: 1971 c. 310.

72.61 Estate tax imposed. In addition to the tax imposed by subch. II, an estate tax is imposed upon the transfer of all property subject to a federal estate tax where the decedent at the time of his death was a resident of this state. The amount of this estate tax equals the excess, if any, of the credit allowable upon the federal estate tax, over the aggregate amount of all death taxes paid for transfers of property taxable because of decedent's death. This tax shall not exceed the extent to which its payment will effect a saving or diminution in the amount of the federal estate tax payable by or out of the estate of the decedent had this subchapter not been enacted. The tax imposed shall be collected and accounted for by the department under s. 72.22. The full amount collected shall be paid to the state.

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

72.62 Liability and lien. Liability for this tax is imposed upon the same persons in the same manner as under s. 72.21 and shall remain a lien in the same manner as under ss. 72.22 (4) and 72.25. If an election is made to pay under s. 72.22 (4), the tax under this subchapter shall be allocated to each distributee based on the distributee's share of the taxable residuary estate, if any.

History: 1971 c. 310; 1979 c. 1, 34.

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

History: 1971 c. 310.

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

History: 1971 c. 310.

SUBCHAPTER IV

GIFT TAX

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

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

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

(2) **TRANSFERS UNDER A GENERAL POWER OF APPOINTMENT.** Any lifetime transfer under a general power of appointment, which is not a transfer taxable under subch. II or III constitutes a transfer taxable under this subchapter. All sections of subch. II, relating to the tax on a transfer with respect to a power of appointment, shall apply to the tax imposed by this subchapter if they are applicable to, not covered by and not in conflict with this subchapter.

History: 1971 c. 310; 1977 c. 418.

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

72.76 General exemptions. No tax is imposed by this subchapter upon the transfer of property when:

- (1) The transfer is taxable under subch. II or III or both.
- (2) The transfer is of any real property or any tangible personal property of a resident donor when the property is located outside the jurisdiction of this state, unless the tangible personal property is outside the jurisdiction of this state temporarily or for the sole purpose of deposit or safekeeping.
- (3) Property is transferred, paid, furnished or delivered by an employer to its employes, or to any organization of its employes, directly or indirectly, or to any person for them or it, to cover insurance, sickness and death benefits, pensions, relief activities, or to any other employes' benefit fund, and medical service to employes and their families.
- (4) An employer transfers amounts to a former employee's distributee or estate, which amounts qualify as an employee death benefit taxable as income under the internal revenue code of 1954, as amended, or excludable from gross income under internal revenue code s. 101 (b).
- (5) Reasonable amounts of property are transferred, paid, furnished or delivered by any person to anyone dependent upon him for support, when the property is transferred, paid, furnished or delivered for the current maintenance, support or education of the dependent.
- (6) The transfer is payment to the department by the donor of a gift tax arising from a prior transfer to the donee.
- (7) The transfer is exempt under s. 72.15 (1) (a).
- (8) The transfer is to a spouse.
- (9) The transfer is payment of an award under ch. 949.

History: 1971 c. 310; 1975 c. 222, 331, 344; 1981 c. 93; 1983 a. 186.

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

History: 1971 c. 310.

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

History: 1971 c. 310.

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

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

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

History: 1971 c. 310.

72.80 Classification of donees. In determining the amount of gift tax due under this subchapter, donees are classified into 4 groups: class A, class B, class C and class D. These

classes contain the same persons, by virtue of their relationship to the donor, as distributee classes A, B, C and D, respectively, in s. 72.16.

History: 1971 c. 310; 1973 c. 90; 1981 c. 93.

72.81 Annual exemption. Transfers of a clear market value of \$10,000 in any calendar year by any donor to any donee are exempt from taxation under this subchapter. This amount is taken out of the first \$25,000 transferred.

History: 1971 c. 310; 1983 a. 194.

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

(a) To a spouse, property of a clear market value of \$100,000 on or after July 1, 1976 to June 30, 1982; and

(b) To all class A donees, property of a clear market value of \$10,000 in respect to transfers occurring before January 1, 1985; property of a clear market value of \$25,000 in respect to transfers occurring on January 1, 1985, and thereafter to December 31, 1985; and property of a clear market value of \$50,000 in respect to transfers occurring on January 1, 1986, and thereafter;

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

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

History: 1971 c. 310; 1977 c. 248; 1979 c. 1; 1981 c. 93; 1983 a. 186, 194, 538.

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

History: 1971 c. 310; 1973 c. 90; 1987 a. 27.

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

History: 1971 c. 310.

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

(2) FILING. By April 15 of each year, the donor and the donee of any transfers during the preceding year must, if the aggregate value exceeds \$10,000, report the transfers and pay the tax to the department. These reports shall disclose all information required on the report form. Gift tax reports and the payment of tax shall be considered timely made if both are received by the department within 5 days of April 15 in a properly addressed envelope with 1st class postage duly prepaid, postmarked before midnight of April 15.

(3) PAYMENT; INTEREST; PENALTY. If the tax imposed is not timely paid, interest shall be charged and collected on the tax due at the rate of 12% per year from the date due until it is paid. In addition, if the required tax return is not timely filed, a penalty of 5% of the tax is imposed. If the tax is not paid by the due date, the donee and donor are jointly and severally liable for this tax, penalty and interest. If one person pays the

tax, there is no right of contribution unless the person paying reserves it in writing on the filed tax return.

History: 1971 c. 310; 1975 c. 222; 1977 c. 29, 248; 1981 c. 20, 93; 1983 a. 194.

72.86 Enforcement and collection. (1) ADDITIONAL ASSESSMENT. No later than 4 years after the report required by s. 72.85 is filed, the department shall audit it and assess any additional tax which may be due. Interest shall be charged and collected at the rate of 12% per year for the period from the date on which the report was due until payment. If no report of a transfer is filed, an assessment may be made any time after the report was due. Notice of an assessment shall be given to both the donor and donee in writing. If the additional tax is not paid within 60 days from the receipt of the notice, an additional penalty of 5% of the tax shall be imposed and collected.

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

(3) DUTY TO FURNISH INFORMATION. If the department considers it necessary, it may require any person, by notice, to make a return, render statements under oath, or to keep records, which the department deems sufficient to show whether or not the person is liable for a tax under this subchapter. If any person so served fails to make a return, render information or keep records required by the department, an additional tax equal to 5% of the amount of tax due shall be assessed and collected in the same manner, at the same time, and subject to the same conditions as apply to the gift tax imposed by this subchapter.

(4) APPLICABLE INCOME TAX PROVISIONS. All provisions of income tax statutes not in conflict with this subchapter on the following subjects apply to the administration of this subchapter: assessment, hearing and appeal procedures including ss. 73.01 and 73.015, preparation of assessment and tax

rolls, certification of taxes due and corrections thereof, collection, including s. 71.91 (7), and refund procedures, except that a claim for refund with respect to the settlement of a right actionable under s. 766.53 (1) or the satisfaction of a judgment providing for the recovery of marital property or compensation from the donee equal in value to the marital property at the time of recovery that was a gift under s. 766.53 (1) may be filed within one year after entry of judgment or receipt of the recovery.

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

(6) ADDITIONAL PENALTY. Any person who wilfully attempts to evade or defeat this tax or its payment, or who makes any false or fraudulent return or statement, with intent to evade or defeat the assessment required, in addition to other penalties provided, shall be fined not less than \$100 nor more than \$5,000 or imprisoned not more than one year or both. Any person who wilfully aids or assists in the preparation of a wilfully false or fraudulent return or of any information for the purpose of evading or defeating the assessment or collection of this tax, whether such falsity or fraud is with or without the knowledge or consent of the person required to make the return or supply such information, shall be fined not less than \$100 nor more than \$5,000 or imprisoned not to exceed one year or both.

History: 1971 c. 310; 1975 c. 224; 1977 c. 29; 1979 c. 221; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 312 s. 17.

See note to 77.27, citing 62 Atty. Gen. 251.

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

(a) If the donee paid the tax under subch. IV, the tax paid shall apply as a credit for that donee against the tax imposed under subch. II or III, with the excess, if any, refunded to the donee or any other person entitled thereto without interest; or

(b) If the donor paid the tax under subch. IV, the amount of tax paid shall be included as an asset in the inventory of the estate and shall be considered an advance payment under s. 72.22 (2) with the excess, if any, to be refunded under s. 72.24 without interest.

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

History: 1971 c. 310; 1977 c. 29.

NOTE: 1987 Wisconsin Act 27 and later Acts of the 1987-88 Legislature revise chapter 72, effective 1-1-92. On that date, the following sections, shown in small type, replace chapter 72, preceding.

CHAPTER 72

ESTATE TAX

72.005 Purpose.
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72.35 Interstate arbitration of death taxes.

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

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

72.01 Definitions. In this chapter, unless otherwise specified:

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

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

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

(7) "Decedent" means the deceased person.

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

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

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

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

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

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

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

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

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

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

History: 1987 a. 27.

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

History: 1971 c. 310.

72.06 Confidentiality of tax returns. Sections 71.78 (1) and (4) to (9) and 71.83 (2) (a) 3 apply to any information obtained from any person by the department on a death tax return, report, schedule, exhibit or other document or from an audit report pertaining to the tax return.

History: 1979 c. 139, 221; 1987 a. 27, 312.

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

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

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

(2) **EXCEPTION; RECIPROCITY AS TO NONRESIDENT DECEDENTS.** A transfer, which is made taxable under this chapter and is of a nonresident decedent's

intangible personal property is not subject to the tax imposed by this chapter if a like exemption is allowed at the time of the death of the decedent by the laws of the state, territory or district of the decedent's residence in favor of residents of this state. This subsection does not apply unless a tax is imposed on the transfer of the decedent's property by the laws of the state, territory or district of the decedent's residence.

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

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

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

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

72.22 Payment. (1) WHEN PAYABLE. The tax imposed by this chapter is due and payable on the date 9 months after the decedent's death.

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

(3) **PAYMENT.** Payments must be made to the department. Full payment shall accompany the estate tax return. If a prepayment was made, any additional tax shown owing on the return, as filed, shall accompany the return.

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

72.23 Interest. If the tax imposed by this chapter is not paid within 9 months of the decedent's date of death, interest is due and payable at the rate of 12% per year from date of death. In computing time under this section, the day of death is excluded.

History: 1971 c. 310; 1973 c. 90; 1977 c. 29; 1977 c. 449 s. 497; 1981 c. 20; 1987 a. 27.

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

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

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

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

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

72.30 Determination of tax. (1) FILING REQUIREMENTS. If a federal estate tax return is required, the personal representative, special administrator, trustee, distributee or other person interested shall prepare the estate tax return, compute the tax, if any, due under this chapter and file the original with the department.

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

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

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

History: 1971 c. 310; 1973 c. 90; 1975 c. 41 s. 52; 1975 c. 331; 1977 c. 449 s. 497; 1979 c. 1; 1985 a. 278; 1987 a. 27; 1987 a. 312 s. 17.

Sub. (4) did not bar court review of tax dispute which arose more than 6 months after tax certificate was issued. Department must issue certificate under (3) each time tax determination is made on amended return. In Matter of Estate of Halsted, 116 W (2d) 23, 341 NW (2d) 389 (1983).

72.33 Adjustments. (1) The person filing the return required by s. 72.30 (1) shall attach a copy of the federal return filed for the transfer of property taxable under this chapter, together with a copy of the closing letter, if available, and proof of payment.

(2) If the amount of the federal estate tax initially paid is subsequently increased or decreased the person entitled to the refund or liable for the additional tax under this chapter shall, within 30 days:

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

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

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

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

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

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

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

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

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

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

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

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

- (a) The agreement;
- (b) The record of the panel's proceedings; and
- (c) The panel's determination.

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

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

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

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