71.361 History: 1955 c. 571; Stats. 1955 s. 71.361.

71.362 History: 1955 c. 571; Stats. 1955 s. 71.362; 1969 c. 276 s. 590 (1).

71.368 History: 1955 c. 571; Stats. 1955 s. 71.368; 1961 c. 33.

71.371 History: 1955 c. 571; Stats. 1955 s. 71.371.

71.372 History: 1955 c. 571; Stats. 1955 s. 71.372.

71.373 History: 1955 c. 571; Stats. 1955 s. 71.373.

CHAPTER 72.

Inheritance Tax Act.

72.01 History: 1899 c. 355; 1901 c. 245; 1903 c. 44, 249; 1905 c. 96; Supl. 1906 s. 1087—1; 1911 c. 663 s. 135; 1913 c. 627, 643; 1915 c. 253 s. 2; 1915 c. 498; 1917 c. 321, 322; 1921 c. 7 s. 2; Stats. 1921 s. 72.01; 1929 c. 298; 1929 c. 462 s. 1; 1939 c. 168, 204, 405; 1939 c. 515 s. 6b; 1945 c. 280, 569; 1949 c. 172; 1951 c. 510; 1953 c. 61 s. 67; 1953 c. 499; 1957 c. 144; 1959 c. 221; 1965 c. 218; 1967 c. 239.

1. General.
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1. General.

On equality, inherent rights, and exercises of taxing power see notes to sec. 1, art. I; on legislative power generally and delegation of power see notes to sec. 1, art. IV; on judicial power generally see notes to sec. 2, art. VII; and on the rule of taxation (privilege taxes) see notes to sec. 1, art. VIII.

An annuity bequeathed by a testator to his wife is subject to an inheritance tax. State ex rel. Kempsmith v. Widule, 161 W 389, 154 NW 695.

An allowance made to a widow under sec. 3935 (2), Stats. 1913, for the support of herself and children pending the administration of her husband's estate is not a "transfer" within the meaning of sec. 1087 and is not subject to an inheritance tax. Estate of Smith v. Smith, 161 W 588, 155 NW 109.

An inheritance tax is a tax, not upon property inherited, but upon the right to receive such property. The property serves as a measure of the tax and furnishes a means of enforcing it against the person liable to pay. The state must have jurisdiction of the transfer of the property to be received; and if the state has nothing to do with the transfer it has no jurisdiction to impose a tax. Estate of Shepard, 184 W 88, 197 NW 344.

Taxes paid on lands in a sister state which had not become due when the owner died, and which were not debts of his, are not deductible in fixing the Wisconsin inheritance taxes. Will of Kelly, 187 W 422, 204 NW 475.

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.

The provisions of ch. 72, Stats. 1929, disclose a complete scheme for the valuing of interests in estates given by will and for the imposing of the tax upon such interests transferred as of the date of death of the testator, and for the payment of the tax upon its imposition, whether the actual enjoyment of the interest transferred be present or future. The tax is imposed upon the right to receive and is fixed by the value of that right. Will of Merrill, 212 W 15, 248 NW 909.

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.

A transfer by will to trustees, to be used to erect a memorial monument costing $20,000 on the testator's burial lot, on which there was already a $3,000 monument, was subject to inheritance tax and properly taxable to the trustees under this section, and it was not free from inheritance tax as a reasonable expense under 318.01 (4), Stats. 1945. Will of Volkering, 253 W 186, 32 NW (2d) 263.

An inheritance tax is not a tax on property or property rights, but is an excise tax levied on the transfer or transaction, and the amount of the property involved is used merely as a measure of the amount of the tax. Estate of Atkinson, 261 W 481, 53 NW (2d) 185.

A bonus payment by an employer to the estate of a deceased employe, not made pursuant to contract, is not a transfer subject to inheritance tax. Estate of Stevens, 266 W 331, 63 NW (2d) 732.

Payments made to a widow pursuant to an antenuptial contract, in lieu of all dower and inheritance rights, are taxable as a transfer "by the intestate laws of this state". Estate of Heuel, 4 W (2d) 400, 90 NW (2d) 634.

The inheritance tax in Wisconsin, imposed pursuant to ch. 72, Stats. 1961, is a tax upon the transfer, transaction, or right to receive property, and the transaction on which it is imposed is the passing of property from the dead to the living. The transfer upon which the tax is imposed, as contemplated by the statute, occurs and the tax accrues as of the time of death of the transferor. Estate of Perry, 35 W (2d) 412, 151 NW (2d) 58.

Property received by a child from a parent, by devise or descent, descends from the child and not from the parent upon the death of the child, unmarried and under age, and the transfer is taxed as coming from the

child and not from the parent. 8 Atty. Gen. 426.

There is no inheritance tax upon transfers to the state; this covers escheats. 8 Atty. Gen. 692.

2. While a Resident of the State.

Assets of a trust are taxable although created in Illinois by an Illinois resident who later moved to Wisconsin where the settlor retained control of the assets including the right to withdraw them or revoke the trust. Estate of Perry, 35 W (2d) 412, 151 NW (2d) 58.

Inheritance taxation as affected by questions of situs, domicile and residence. Ihrig, 11 MLR 13.

3. Transfers in Contemplation of Death.

The words "in contemplation of death," as used in ch. 44, Laws 1903, cover transfers which were induced by the expectation of death, so that they are in the nature of a testamentary disposition. They refer to an expectation of death which arises from such a bodily or mental condition as prompts persons to dispose of their property to those whom they regard as entitled to it. They are restricted to gifts causa mortis. State v. Pabst, 139 W 561, 121 NW 351.

There is no "contemplation of death" when the feeling that dissolution is approaching is absent and does not impel or promote the transaction in question. On the contrary, it is an expectation of impending death arising from a bodily or mental condition which causes persons to bestow their property upon those whom they regard as entitled to their bounty. State v. Thompson, 154 W 320, 142 NW 647.

The value of testator's property passing under a trust declared prior to his death was properly added to the value of the property passing under the will and the tax assessed on the sum of both instead of on each transfer separately. Will of Stephenson, 171 W 452, 177 NW 579.

No definite rule can be laid down determining what is a material part of an estate. That is a judicial question to be determined in each case by the circumstances, the amount of the gift being to a large extent controlling. The legislative intent was that each gift made during the stated period preceding death should be separately considered, and be taxable if it was in the nature of a final disposition. The amount of the tax is determined by the value of the gift at the time of the donor's death, even though that be less than the value at the date of the gift. Will of Stevens, 177 W 500, 188 NW 484.

Where the husband stated that he did not wish to change his will but requested that at his wife's death the home be turned over to his son, a gift of the proceeds of the sale of the home to such son made within 6 (now 2) years of the mother's death is taxable, the gift being in response to a sentiment and not in carrying out the father's will and no adequate valuable consideration having been paid by the son. Estate of Johnston, 186 W 599, 203 NW 376.

The tax attaches, if at all, not at the date of the gift, but of the death of the donor; and, therefore, the rate of taxation may be changed in the meantime. In re Uihlein's Will, 187 W 101, 203 NW 742.

The judgment in this case is based on a statute which makes gifts in contemplation of death taxable; and the fact that the court gave undue effect to an unconstitutional statute did not affect the jurisdiction of the court. Beck v. State, 196 W 242, 219 NW 197.

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.

The evidence in the proceeding was sufficient to support the conclusion of the county court that a testator's gifts, amounting to nearly $2,000,000 to his wife, children, and others, made within 2 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. Will of Harnischfeger, 208 W 317, 242 NW 153, 243 NW 453.

An antenuptial settlement is not taxable under 72.01 (3)(a), Stats. 1929. Will of Koeffler, 218 W 560, 260 NW 638, 261 NW 711.

The phrase "in contemplation of death" 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 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 was taxable 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 NW (2d) 256.

72.01 (3)(a), Stats. 1955, imposing inheritance taxes on transfers of property made without consideration in contemplation of the death of the transferor, can apply to the transfer involved when a decedent has deposited his own funds in the joint names of himself and another in contemplation of death. Estate of Simonson, 11 W (2d) 84, 104 NW (2d) 134.

4. Transfers to Take Effect on Death.

Where a person died a resident of this state and had previously transferred certain personal property located outside of the state in trust to take effect on his death it was

taxable as an inheritance in this state. Estate of Bullen, 143 W 512, 128 NW 109.

A transfer of stock during lifetime in trust for children with only reservation that of a right to vote was not a transfer intended to take effect at or after the donor's death and hence was not subject to inheritance tax. In re Prange's Will, 201 W 636, 231 NW 271.

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.

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.

Making out a stock certificate in the names of the widow and children of the deceased did not vest title without delivery, actual or constructive to them. Estate of Heller, 210 W 474, 246 NW 683.

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

72.01 (3) (b) was drawn from a New York law and had already been construed by the courts of that state. Wisconsin will construe the statute as New York did, and will also follow later decisions based on the earlier cases. The present worth of an annuity payable to the widow of an employe under the U. S. Civil Service Retirement Act is not subject to Wisconsin inheritance tax under 71.01 (3) (b) or (7). Estate of Sweet, 270 W 256, 70 NW (2d) 645.

Notes and bonds delivered by a decedent to her son without consideration, to be divided on her death between the son and his sister, were subject to inheritance tax as transfers by gift intended to take effect at the death of the donor. Will of Fehlhaber, 272 W 327, 75 NW (2d) 444.

In its reference to a transfer made "without an adequate and full consideration in money or money's worth," the legislature intended the sufficiency of the consideration to be determined as of the time set for the transfer of the property in possession and enjoyment, that is, the date of death of the grantor. Under ch. 72, Stats. 1951, parties may not bind the state to their own stipulation of value of property, other than an adequate and full consideration at the time of transfer, when such property is intended to come into possession and enjoyment by the transferee at or after the death of the grantor, vendor, or donor. Estate of Banta, 273 W 328, 77 NW (2d) 730.

An employe's election of a joint and survivor option in a pension trust fund to which all contributions had been made by the employer, to take effect on his death, was a transfer subject to inheritance tax on his death, even though the pension was defeasible on certain remote contingencies. Estate of Stone, 10 W (2d) 467, 103 NW (2d) 663.

The amount a surviving wife receives under an employes' pension retirement plan in which her husband was a participant does not constitute a taxable transfer upon his death, if the plan does not give the husband an option. Estate of King, 28 W (2d) 431, 137 NW (2d) 122.

72.01 (3) (b), Stats. 1961, which subjects to the imposition of inheritance taxes transfers in contemplation of death or to take effect after death, is a tax upon succession to the possession and enjoyment of property, and where the right to such possession and enjoyment is suspended until the donor's death, the interest does not reach the donee until that event occurs, and the succession to that interest is taxable, for then and then only is there a shifting of economic use and benefit of the property to the donee. Estate of Perry, 35 W (2d) 412, 151 NW (2d) 58.

Taxability of transfers intended to take effect in possession or enjoyment at or after death. Marciniak, 40 MLR 216.

Taxation of retirement plans; election under joint and survivor option. Kamm, 1961 WLR 153.

5. Transfers Under Power of Appointment.

The inheritance tax may be levied upon a transfer which becomes effective by appointment after the passage of the law under a power previously created, whether the appointment is made from a class or the power is a general one. And a transfer is taxable whether it results from a failure to make the appointment or from the appointment. The proviso in sec. 1087-1 (4), Stats. 1913, excepting estates vested before the act and contingent powers created by will before the act does not apply to estates or property created by appointment under sec. 1087-1 (5). Montague v. State, 163 W 58, 157 NW 508.

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 859.

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 72.01 (5). Estate of Rees, 233 W 635, 290 NW 167.

Taxation and power of appointment. Thompson, 1939 WLR 254.

6. Joint Interests.

Upon the death of one of 2 joint tenants, title devolves upon the survivor and is liable to taxation under 72.01, Stats. 1921. Will of Ray, 188 W 180, 205 NW 917.

Half the value of property held in the joint names of a husband and wife was subject to inheritance taxes as a transfer to the husband on the death of the wife, in the absence of evidence that the wife held her half interest in trust or as agent for the husband. Estate of Hounsell, 252 W 138, 31 NW (2d) 203.

All that is needed to set the statute in motion and impose the tax is to have property in the joint names of the parties, and in such case testimony offered by a surviving husband, that the property was paid for with his money and was in fact his property although acquired and held in the name of himself and his wife, is immaterial. Estate of Atkinson, 261 W 481, 53 NW (2d) 185.

72.01 (6) excluded the operation of 72.01 (3) (b) to a situation where government bonds and bank accounts were held in the joint names of a husband and wife, with the intention that each should have the right to collect or withdraw at will before or after the death of the other, although the husband had furnished all the funds and the surviving wife had furnished none, and the husband had collected and used all the income from such items, reported it to the proper authorities as his income, and paid on his own account all income taxes assessed thereon. (Dept. of Taxation v. Berry, 258 W 544, commented on and distinguished.) Estate of Simonson, 11 W (2d) 84, 104 NW (2d) 134.

Inheritance and gift taxes on joint bank accounts. Silberman, 1961 WLR 150.

7. Insurance Part of Estate.

If a husband insures his life for his wife's benefit and pays the premiums thereon, he transfers property to her, in legal effect the transaction being the same as a gift. The transfer of property to the beneficiary, which becomes consummated at the time of death of the insured, may be taxed by the legislature. Will of Allis, 174 W 527, 184 NW 381.

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 is made a part of the estate for the purpose of inheritance taxation only, and is not liable on account of claims allowed against the estate. Estate of Siljan, 233 W 54, 288 NW 775.

The present worth of an annuity payable to the widow of an employe under the U. S. Civil Service Retirement Act is not subject to Wisconsin inheritance tax under 72.01 (3) (b) or 72.01 (7). Estate of Sweet, 270 W 256, 70 NW (2d) 645.

Proceeds of a life policy payable to the insured's widow as beneficiary, and left by her on deposit with the insurance company, were part of the widow's estate for purposes of determining the inheritance tax due from her estate, and did not represent insurance exempt from taxation in her estate. Will of Fehlhaber, 272 W 327, 75 NW (2d) 444.

Payments made under the U. S. war risk insurance act are exempt by said act from inheritance taxes and all other taxes. 8 Atty. Gen. 306.

8. Basis of Tax.

The basis of a tax upon the transfer of property at death is not inherently and necessarily the value of the property. The legislature may fix any arbitrary basis for its computation. It has fixed as such basis the clear market value at the instant of death and the statute neither expressly nor impliedly provides any deductions from such basis. Estate of Week, 169 W 316, 172 NW 732; Estate of Ebeling, 169 W 432, 172 NW 734.

Where a testator by his will directed his executors to pay the inheritance tax on a large number of pecuniary bequests, the amount of each bequest was properly increased to such sum that, when the inheritance tax was deducted, the original amount of the legacy would remain, instead of computing the tax on the amount of said legacy, the right to have the tax paid by the executors being an interest in the property transferred and taxable. Estate of Levalley, 191 W 356, 210 NW 941.

Requiring valuation of newspaper stock at market value, though the stock was sold for less because of a provision in the will restricting the field of purchasers, was proper. In re Nieman's Estate, 230 W 23, 283 NW 452.

The terms "clear market value," as used in 72.01 (8), Stats. 1937, "fair 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 782.

Where the testator's brother, to whom the testator left his entire estate, acquired certain corporate stock therein as a legatee under the will and not by contract, the value of his legacy was not affected by the terms of a contract whereby the testator had agreed to sell the stock to the brother at a stipulated price and, in such situation, the clear market value of the stock for the purpose of the inheritance tax was properly determined without giving any consideration to the price stipulated in such contract. Estate of Michel, 262 W 432, 55 NW (2d) 388.

The determination of value cannot be based on liquidating value of stock where the owner cannot force a corporate liquidation. Estate of Gooding, 269 W 496, 69 NW (2d) 586.

Stock sold by an executor to an heir, pursuant to an old contract made years before the testator's death, at a figure much below actual market value at the time of transfer was subject to inheritance tax under 72.01 (3) (b) and (8) on the basis of full value at the date of transfer. Estate of Banta, 273 W 328, 77 NW (2d) 730.

9. Reciprocity as to Nonresident Decedents.

72.01 (9), Stats. 1943, applies to the trans-

fer 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.

72.01 (9), Stats. 1943, exempted from the Wisconsin tax a transfer resulting from the failure of a resident of the state of New York, dying in 1939, to exercise a power of appointment, where New York did not impose an inheritance tax at all on such transfer but had a like reciprocal statute. Sec. 1, ch. 280, Laws 1945, amends 72.01 (9), so that it now provides that it "shall not apply unless a tax is imposed on the transfer of said property by the laws of the state" of the decedent's residence. Estate of Uihlein, 247 W 476, 20 NW (2d) 120.

A direction in a will that the testator's debts, funeral expenses, "and all inheritance, estate and succession taxes" be paid by the executors, followed by provisions making specific bequests and devises, and a provision disposing of the residue of the testator's estate, indicated an intention that the Wisconsin inheritance taxes be paid out of the residuary estate, thereby freeing the special legatee and devisees from the payment of such taxes imposed on their legacies and devises and diminishing the residuary estate by the amount of these taxes. Will of Cudahy, 251 W 116, 28 NW (2d) 340.

Under a trust agreement which expressly made the trust assets (Wisconsin real estate) subject to the exclusive direction of the settlor, and under the trustee's declarations of trust, the settlor-beneficiary's interest in the real estate constituted real property in Wisconsin and as such was subject to Wisconsin inheritance taxes on his death while a resident of California. The reciprocity provision of 72.01 (9) does not apply. Estate of Petit, 252 W 94, 31 NW (2d) 140.

A "like" exemption is allowed if the state of the decedent's residence would exempt as to a Wisconsin resident in identical converse circumstances, although the statute defining the exemption may not be in the same form as the Wisconsin reciprocity statute and there may be some points of difference between them. A tax is "imposed" if the bequest is subject to taxation in the state of residence, although it may be absolved from payment because it qualifies under some exemption. A transfer to a trustee of shares of stock owned by a Kentucky resident in a Wisconsin corporation is exempt from the Wisconsin tax, where Kentucky makes such a transfer subject to taxation, but exempts it in this case because the bequest goes to charity, and Kentucky would exempt from the Kentucky tax a devolution of shares of stock owned by a Wisconsin resident in a Kentucky corporation under the circumstances of this case. Estate of Robbins, 258 W 206, 45 NW (2d) 678.

The reciprocity provision applies so as to exempt from the Wisconsin tax a transfer of shares of stock owned by a resident of the District of Columbia in a Wisconsin corporation, where the transfer is to a charitable trust for a use not confined to "within" the District of Columbia and therefore a tax is imposed under its laws on such transfer, and its laws, although not containing a reciprocity exemption provision, do not impose any tax on transfers of intangible personal property of nonresident decedents not employed by them in carrying on business in the district. Estate of Stewart, 258 W 211, 45 NW (2d) 687, 47 NW (2d) 742.

Multiple inheritance taxation and reciprocal legislation. 5 WLR 288.

72.015 History: 1959 c. 221; Stats. 1959 s. 72.015; 1965 c. 163; 1967 c. 239; 1969 c. 292.

Under 72.01 (8), Stats. 1951, the deduction for federal estate taxes paid is not to be computed on an apportionment basis measured by the ratio of the gross estate for Wisconsin tax purposes to the gross estate for federal tax purposes, but is to be computed by taking the amount of the Wisconsin taxable estate subject to federal estate taxes, computing the federal estate taxes on that amount, and allowing the result as the amount deductible in the computation of the state inheritance taxes. Estate of Stevens, 266 W 331, 63 NW (2d) 732.

As used in 72.015 (5), Stats. 1961, the words "value of the property" connote value of assets, with the effect that, where a federal estate tax was computed on an estate consisting of identical property, taken at identical values as in the Wisconsin inheritance-tax determination, the full amount of the federal tax paid was deductible in the Wisconsin determination, although the federal tax would have been less than the amount paid if the estate had deducted the full amount of administration expenses which it was entitled to deduct. Estate of Wanvig, 21 W (2d) 416, 124 NW (2d) 660.

72.02 History: 1899 c. 355 s. 2; 1901 c. 245 s. 2; 1903 c. 44 s. 2; Supl. 1906 s. 1087—2; 1911 c. 633 s. 136; 1917 c. 320; 1921 c. 7 s. 3; 1921 c. 568 s. 1, 2; Stats. 1921 s. 72.02; 1939 c. 311; 1945 c. 300, 502.

Under ch. 44, Laws 1903, where an interest exceeds $25,000, the amount below $25,000 is taxed. Beals v. State, 139 W 544, 121 NW 347.

Tax considerations in making gifts to sons-in-law. Miller, 44 MLR 106.

Statutory construction of the inheritance tax rate structure. Ragatz, 1960 WLR 510.

72.03 History: 1903 c. 44 s. 3; Supl. 1906 s. 1087—3; 1911 c. 663 s. 137; 1917 c. 320; 1921 c. 7 s. 4; 1921 c. 568 s. 1; Stats. 1921 s. 72.03; 1925 c. 239; 1943 c. 369.

Under 72.01-72.04, Stats. 1921, the exemption given by 72.04 was taken out of the first $25,000 and hence in the case of a widow there was no tax at the primary rate (the allowance being $25,000), and the tax on the second $25,000 was twice the primary rate, or 4 per cent. In re Duerrwaechter's Estate, 187 W 88, 203 NW 914.

72.035 History: 1943 c. 369; Stats. 1943 s. 72.035.

72.04 History: 1903 c. 44 s. 4; 1905 c. 96 s. 2; Supl. 1906 s. 1087—4; 1911 c. 530; 1913 c. 627; 1915 c. 498; 1917 c. 319, 321; 1921 c. 7 s. 5; 1921 c. 568 s. 2; Stats. 1921 s. 72.04; 1923 c. 306; 1925 c. 249, 304; 1927 c. 416, 471; 1929 c. 462 s. 1; 1933 c. 233, 275; 1933 c. 454 s. 7; 1937 c. 353; 1939 c. 311; 1943 c. 131, 260, 369; 1943 c. 552 s. 17; 1945 c. 280, 569; 1949 c. 420;

1951 c. 483; 1953 c. 131, 499, 584; 1953 c. 631 s. 43; 1955 c. 589; 1959 c. 19; 1967 c. 92 s. 22; 1967 c. 296; 1969 c. 158 s. 106.

1. Exemption of transfers for specified purposes.
2. Reciprocity in exemptions.
3. Property outside the state.

1. Exemption of Transfers for Specified Purposes.

A bequest to a Masonic lodge is not exempt from taxation under 72.01-72.04, Stats. 1925. In re Roberts' Will, 193 W 415, 214 NW 347.

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. 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.

Bequests to relatives must be treated as noncharitable and are, therefore, taxable, whether relatives are rich or poor. Will of Chafin, 210 W 675, 247 NW 325.

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.

72.04 (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. An administrative committee of the corporation owning and operating the Home is not a "voluntary association." Estate of Thronson, 243 W 73, 9 NW (2d) 641.

The words "which shall use the property so transferred exclusively for the purposes of their organization, within the state," refer back to "corporations of this state," as well as to the next-preceding "organization of veterans." If the articles of incorporation of a Wisconsin religious corporation provide for corporate purposes that can be carried out only within the state, this is sufficient to sustain the exemption from inheritance tax of an outright bequest to such religious corporation. Under the provision in 72.04 (1) exempting all property transferred to trustees, in trust exclusively for religious, etc., purposes in this state, it is the purpose of the bequest, rather than the corporation to which payment of the trust bequest is to be made, which determines such exemption. A bequest to a Wisconsin religious corporation organized to promote and aid "home and foreign missions" which bequest was to be paid to such religious corporation by a bank-trustee on the death of the life beneficiaries of the trust, was not exempt from inheritance tax as a trust bequest "exclusively for . . . religious . . . purposes in this state," and a resolution adopted by the board of directors of such religious corporation confining the use of the proceeds of the bequest to Wisconsin was not effective to bring about such exemption. Whether a trust bequest is exempt from inheritance tax is to be determined as of the instant of death of the decedent, and not by any subsequent action taken by the beneficiary. The exemption from inheritance tax is not defeated if a decedent makes a trust bequest, otherwise exempt from tax, subject to a condition dependent on occurrence after death. Estate of Jussen, 263 W 274, 57 NW (2d) 343.

Where a testator made a bequest to a Wisconsin charitable corporation and the will was silent as to where the bequest should be used and the articles of the corporation gave its directors discretion to use its funds either within or without this state, or both, but the directors adopted a resolution that all property received from the testator should be permanently and irrevocably set aside for use exclusively within this state—the bequest was exempt from inheritance tax. (Estate of Jussen, 263 W 274, distinguished.) State v. Fulton Foundation, 273 W 599, 79 NW (2d) 230.

A bequest to the "Trustees of the Grand Lodge of Free and Accepted Masons of Wisconsin," a Wisconsin corporation, organized in part for fraternal and in part for charitable purposes, to be used for the maintenance of charitable institutions owned and operated by such corporation, is construed under the language of the will as being a bequest to the corporation itself, and hence such bequest is not exempted from inheritance tax as a transfer of property to a Wisconsin corporation organized "solely" for charitable purposes, nor as a transfer to individuals, as trustees, in trust. Estate of Silverthorn, 274 W 453, 89 NW (2d) 430.

See note to 72.79, citing Fulton Foundation v. Dept. of Taxation, 13 W (2d) 1, 108 NW (2d) 312.

A transfer by will to a voluntary cemetery association for the purpose of erecting and maintaining a chapel and to provide for keeping vaults and purchasing additional land for cemetery purposes was not exempt from inheritance tax as a transfer to a voluntary association solely for religious purposes under

72.04 (1), but was controlled and limited as to exemption by the special provisions of 72.045 (4), exempting from inheritance taxation a bequest not to exceed $500 to the cemetery in which the decedent is buried. Estate of Sykes, 27 W (2d) 211, 133 NW (2d) 805.

2. Reciprocity in Exemptions.

A bequest by a Wisconsin resident to the American Cancer Society, a New York charitable corporation, national in scope and authorized to carry on its work in other states as well as in New York, which bequest is to be used in research, is exempted from Wisconsin inheritance tax. Once it is established that the legatee organization is the creature of a reciprocal state, it is the character of the organization as charitable and the character of the use of the funds as charitable that qualify the transfer as one to which the exemption under 72.04 (3) applies. Estate of Schwarten, 274 W 146, 79 NW (2d) 836.

A bequest to the named president of the Federal Republic of Germany, or his successor in office, not as a trust, to be used by the legatee to relieve the suffering and hardship of persons displaced and driven from the East Zone, with a further direction that disbursement of the aid be made by the legatee in his personal and not in his official capacity, was not exempted from Wisconsin inheritance tax either by 72.04 (1) and (3), or by treaty. 72.04 (3), which extends reciprocity to transferees in "other states, commonwealths, territories, or districts," does not include foreign nations. Estate of Wieboldt, 5 W (2d) 363, 92 NW (2d) 849.

Death taxes and the alien; treaty considerations. Silber, 1960 WLR 74.

3. Property Outside the State.

Residents of this state receiving an estate located partly within and partly without the state should be taxed the same as if the estate consisted of that part only which is within the state. Estate of Carter, 167 W 89, 166 NW 657.

72.045 History: 1903 c. 44 s. 4; Supl. 1906 s. 1087-4; 1911 c. 530; 1917 c. 319; 1921 c. 7 s. 5; 1921 c. 568; Stats. 1921 s. 72.04; 1923 c. 306; 1925 c. 249, 304; 1933 c. 233, 275, 454; 1937 c. 353; 1943 c. 369; 1945 c. 280; 1949 c. 420; 1953 c. 499 s. 3, 4; 1953 c. 584; Stats. 1953 s. 72.045; 1969 c. 292.

Editor's Note: In connection with ch. 275, Laws 1933, see Will of Brown, 209 W 382, 245 NW 66.

Where a son assigned his right in property expected through descent from his mother to a college, such property is subject to an inheritance tax which accrued contemporaneously with the vesting of the right to such property in the son, as he had no authority to change the order of descent or substitute another beneficiary or heir. Estate of Johnston, 186 W 599, 203 NW 376.

A transfer by will to trustees, to use a part of the income for the care and maintenance of the testator's burial lot, and to pay the balance of the income to the cemetery association, was not exempt from inheritance tax. Will of Volkering, 253 W 186, 32 NW (2d) 263.

Bequests for masses for the testatrix, her husband, and deceased relatives were bequests for the performance of "a religious purpose or religious service for or in behalf of" the individual persons designated and thereunder were exempted from inheritance taxes only to the extent of $1,000, as against a contention that such bequests were wholly exempt as bequests to religious corporations for religious and charitable purposes. Estate of Miller, 261 W 534, 53 NW (2d) 172.

See note to 72.04, on exemption of transfers for specified purposes, citing Estate of Sykes, 27 W (2d) 211, 133 NW (2d) 805.

Inheritance tax credit for tax on prior transfers. Hertel, 1961 WLR 329.

72.05 History: 1899 c. 355 s. 3; 1903 c. 44 s. 5; Supl. 1906 s. 1087—5; 1909 c. 504; 1911 c. 663 s. 138; 1913 c. 627; 1921 c. 7 s. 6; Stats. 1921 s. 72.05; 1929 c. 462 s. 1; 1935 c. 318; 1943 c. 20; 1949 c. 197; 1953 c. 61 s. 68; 1957 c. 460; 1969 c. 276 s. 590 (1); 1969 c. 339; 1969 c. 392 s. 35g.

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 10-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 History: 1899 c. 355 s. 4; 1901 c. 245 s. 4; 1903 c. 44 s. 6; Supl. 1906 s. 1087—6; 1909 c. 504; 1921 c. 7 s. 7; Stats. 1921 s. 72.06; 1943 c. 369.

Litigation was necessary and the delay in determining the tax was unavoidable; so interest at 6% was correct. State v. Pabst, 139 W 561, 121 NW 351.

Payment of inheritance taxes within 18 months from accrual to avoid paying interest was voluntary. Plaintiffs, voluntarily paying excessive inheritance taxes to avoid paying interest, and recovering excess taxes paid from the state, were not entitled to interest. Schlesinger v. State, 198 W 381, 223 NW 857.

The discount provision in 72.06, Stats. 1951, is not applicable to the state estate tax imposed by 72.50 to 72.61, or to the 30% emergency inheritance tax measured thereby imposed by 72.74. It is applicable to normal inheritance taxes imposed by 72.01 to 72.24 and to the emergency inheritance tax imposed by 72.74 measured thereby. 40 Atty. Gen. 86.

72.065 History: 1963 c. 493; Stats. 1963 s. 72 065.

72.07 History: 1899 c. 355 s. 5; 1901 c. 245 s. 3; 1903 c. 44 s. 7; Supl. 1906 s. 1087—7; 1909 c. 504; 1921 c. 7 s. 8; Stats. 1921 s. 72.07; 1953 c. 61 s. 69.

72.07, Stats. 1933, does not support the construction that where taxes are paid without a sale a lien upon the property which might have been sold arises. 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 History: 1899 c. 355 s. 6; 1901 c. 245 s. 5; 1903 c. 44 s. 8; Supl. 1906 s. 1087—8; 1909 c. 504; 1913 c. 627; 1921 c. 7 s. 9; Stats. 1921 s. 72.08; 1929 c. 462 s. 1; 1949 c. 197; 1969 c. 241; 1969 c. 276 s. 590 (1).

72.08 (2), Stats. 1927, providing for a refund of inheritance taxes erroneously paid into the state treasury, being silent as to the payment of interest on the sum refunded, does not imply that interest should be paid. Schlesinger v. State, 195 W 366, 218 NW 440.

72.08, Stats. 1925, plainly recognizes the right of appeal from an order of a county court fixing the amount of inheritance tax. Beck v. State, 196 W 242, 219 NW 197.

Where the executors received 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 6 years later. An allegation that the county treasurer received 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 History: 1899 c. 355 s. 7; 1903 c. 44 s. 9; Supl. 1906 s. 1087—9; 1911 c. 663 s. 138; 1921 c. 7 s. 10; Stats. 1921 s. 72.09.

72.10 History: 1899 c. 355 s. 8; 1903 c. 44 s. 10; Supl. 1906 s. 1087—10; 1911 c. 663 s. 138; 1921 c. 7 s. 11; Stats. 1921 s. 72.10; 1957 c. 185.

72.11 History: 1899 c. 355 s. 9; 1903 c. 44 s. 11; Supl. 1906 s. 1087—11; 1909 c. 504; 1911 c. 530; 1913 c. 627, 763; 1919 c. 169; 1921 c. 7 s. 12; 1921 c. 407; Stats. 1921 s. 72.11; 1923 c. 73; 1925 c. 238; 1933 c. 269, 376; 1943 c. 20, 440; 1953 c. 251; 1957 c. 460; 1961 c. 19, 621; 1963 c. 178; 1969 c. 276 s. 590 (1).

In the absence of a known market value, proof of the actual value of corporate stock may be received. Will of Porter, 178 W 557, 190 NW 473.

Neither 72.11 nor 226.02, Stats. 1923, confers the power to impose a tax on the transfer of stock held by a nonresident decedent in a foreign corporation having property and being licensed to do business in this state. Estate of Shepard, 184 W 88, 197 NW 344. But see Utah v. Aldrich, 316 US 174.

No prejudicial error resulted from the exclusion of income-tax returns of the corporation offered under the provisions of 72.11 (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 History: 1899 c. 355 s. 10; 1903 c. 44 s. 12; Supl. 1906 s. 1087—12; 1909 c. 504; 1911 c. 530; 1913 c. 627; 1921 c. 7 s. 13; Stats. 1921 s. 72.12; 1929 c. 462 s. 1; 1963 c. 407; 1967 c. 289; 1969 c. 292.

"Under our inheritance tax law the county judge has no function to perform. The value of the estate for inheritance tax purposes is determined by the county court either with or without the appointment of an appraiser." Will of Porter, 178 W 556, 561, 190 NW 473, 475.

72.12, Stats. 1925, confers jurisdiction to hear and determine all inheritance tax matters. (Beals v. State, 139 W 544, 121 NW 347, overruled.) Beck v. State, 196 W 242, 219 NW 197.

See note to 72.15, on rehearing in county court, citing Estate of Kirsh, 269 W 32, 68 NW (2d) 455.

Under 72.12 (3), Stats. 1959, where the normal tax is less than $3, the county fee is the amount of the normal tax; all of the emergency tax is to be paid to the state; the public administrator's fee is not contingent on the collection of a tax and is to be paid out of the inheritance tax fund generally before remittance. 49 Atty. Gen. 136.

72.13 History: 1899 c. 355 s. 11; 1901 c. 245 s. 6; 1903 c. 44 s. 13; 1903 c. 249 s. 2; Supl. 1906 s. 1087—13; 1909 c. 504; 1911 c. 663 s. 138; 1913 c. 627 s. 9; 1921 c. 7 s. 14; Stats. 1921 s. 72.13; 1943 c. 20; 1969 c. 276 s. 590 (1).

On the basis of the inheritance tax see notes to 72.01.

The requirement of sec. 1087—13, Stats. 1917, that property be appraised for inheritance tax purposes at its "fair market value," and the requirement of sec. 3821 that the appraiser of an estate fix its "value in money," are practically identical requirements, the purpose of the valuation not being an element to be considered in either case. Will of Matthews, 174 W 220, 182 NW 744.

In an estate which included 1,599 of a total of 2,500 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 the policies held by the corporation on his life. Will of Patton, 227 W 407, 278 NW 866.

72.14 History: 1899 c. 355 s. 12; 1903 c. 44 s. 14; Supl. 1906 s. 1087—14; 1909 c. 504; 1911 c. 663 s. 138; 1921 c. 7 s. 15; Stats. 1921 s. 72.14; 1945 c. 178.

72.15 History: 1899 c. 355 s. 13; 1901 c. 245 s. 7; 1903 c. 44 s. 15; 1903 c. 249; Supl. 1906 s. 1087—15; 1909 c. 504; 1911 c. 530; 1911 c. 663 s. 138; 1913 c. 627; 1917 c. 318; 1921 c. 7 s. 16; Stats. 1921 s. 72.15; 1929 c. 462 s. 1; 1937 c. 355; 1943 c. 20, 177; 1947 c. 65, 372; 1949 c. 94, 197; 1951 c. 326, 510; 1953 c. 251; 1959 c. 288; 1969 c. 276 s. 590 (1); 1969 c. 339 s. 27; 1969 c. 392 c. 87 (22).

1. Determination of tax.
2. Future estates.
3. Contingent estates.
4. Rehearing in county court.

1. Determination of Tax.

The determination of the court fixing the inheritance tax on the basis that the will gave the testator's widow a life estate, made with-

out any contest, was not res adjudicata or binding on the rights of the parties in subsequent proceedings to construe the will. Will of Zweifel, 194 W 428, 216 NW 840.

A judgment of a county court determining the amount of an inheritance tax is binding until reversed, set aside or modified by judicial authority; and a statement filed with the state treasurer by the judge of the county court indicating that the tax was erroneous does not authorize the treasurer to make a refund. State ex rel. Straight v. Levitan, 197 W 549, 222 NW 805.

Tax accounting problems of personal representatives. Haushalter, 47 MLR 57.

2. Future Estates.

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, 243 W 44, 9 NW (2d) 102.

3. Contingent Estates.

The state is entitled to a tax measured by the clear market value of the property transferred; and the value of the estate for tax purposes cannot be diminished by dividing it into term estates and remainders. If a contingent remainder is defeated and the estate passes to another remainderman, an adjustment pursuant to sec. 1087—15 (6) and (8), Stats. 1917, will be made. Estate of Stephenson, 171 W 452, 177 NW 579.

The present value for taxation of realty, insurance, and an annuity for life transferred by will to the testator's widow was properly determined by means of mortality tables used by the insurance commissioner. Since repeal of the provision for postponement of imposition of inheritance tax, there can be no postponement, and 72.15 (9), Stats. 1929, is applicable only to cases which arose before repeal and determination of tax was postponed. Will of Merrill, 212 W 15, 248 NW 909.

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 the remainder since it was exempt if the city accepted the gift. Thereafter the city declined to accept the devise; so under the terms of the will the residuary legatee 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 NW (2d) 149.

The purpose of 72.15 (8) is to determine finally the inheritance tax where the rights, interests or estates of the transferees are dependent on contingencies or conditions whereby they may be created, defeated, extended or abridged, and such section is not limited to cases where there would be a shift in the rate classification of the transferees. Estate of Wheeler, 252 W 613, 32 NW (2d) 624.

Where an order of 1924 determining inheritance taxes did not determine any taxes on the remainder interests but expressly provided that the taxes as to the unknown beneficiaries be postponed for future consideration, the provisions of 72.15 (9) applied, so that the tax on the remainder interests should be based on full value as of the date of the death of the life beneficiary, and not on the value as of the date of the death of the testatrix. 72.15 (9) affects only the appraised values of the various contingent remainders, and it does not alter the rates and exemptions which apply to them and which remain those in effect at the death of the testatrix. Estate of Latimer, 271 W 1, 72 NW (2d) 321.

4. Rehearing in County Court.

An application for a rehearing before the county court, being optional with the parties interested, is not a condition precedent to an appeal, though it is advisable to avoid the necessity of an appeal. Estate of Johnston, 186 W 599, 203 NW 376.

72.15 (11), Stats. 1921, specifically deals with rehearings in the matter of the determination of an inheritance tax, and it seems that it would prevail over any other general statute authorizing rehearings by the county court. Estate of Cudahy, 196 W 260, 219 NW 203.

An application to rehear a determination of inheritance tax filed more than 60 days after entry of judgment could not be granted. In re Aylward's Estate, 199 W 347, 226 NW 311.

Under 72.15 (11) the county court has no jurisdiction to rehear a determination of inheritance taxes after the lapse of 60 days, in respect to inter vivos gifts not included in the inventory and not considered as to tax status. Neither 72.12 (1) nor 324.05 apply in this case. Under 72.15 (12) the attorney general may have a review in circuit court by applying therefor in 2 years. Where assets are first discovered after an estate is closed, good title would not pass without probate and payment of tax, and the state could apply for the reopening of the estate, but the limitations in 72.15 (11) or (12) apply to after-discovered inter vivos gifts. Estate of Kirsh, 269 W 32, 68 NW (2d) 455.

The judicial discretion lodged in the county court under 72.15 (11), Stats. 1965, is, where application is timely made, limited to whether a new trial should be granted in connection with such hearing. Absent a discretionary order of the county court granting a new trial, a rehearing should be granted any interested party dissatisfied with the appraisement or assessment and determination of the tax, limited as provided by 72.15 (11) to the "records, proceedings, and proofs had and taken on the hearing". Estate of Zeller, 39 W (2d) 695, 159 NW (2d) 599.

72.16 History: 1899 c. 355 s. 14; 1903 c. 44 s. 16; Supl. 1906 s. 1087—16; 1911 c. 663 s. 138; 1913 c. 627; 1921 c. 7 s. 17; Stats. 1921 s. 72.16; 1937 c. 328; 1943 c. 20; 1969 c. 276 s. 590 (1).

72.17 History: 1899 c. 355 s. 15; 1903 c. 44

s. 17; Supl. 1906 s. 1087—17; 1909 c. 504; 1913 c. 627 s. 11; 1921 c. 7 s. 18; Stats. 1921 s. 72.17; 1923 c. 72; 1925 c. 237; 1929 c. 462 s. 1; 1937 c. 354; 1943 c. 20; 1951 c. 594; 1967 c. 43; 1969 c. 276 s. 590 (1); 1969 c. 334; 1969 c. 339 s. 27.

The state treasurer has no authority to pay the fees of a public administrator for his services in inheritance-tax cases even where there are no inheritance tax funds in the county treasury out of which an order for payment of such fees made by the county judge can be paid. 18 Atty. Gen. 248.

72.17, Stats. 1931, provides proceedings for the determination of the inheritance tax where deceased left no estate, no probate proceedings were brought, and life insurance was paid directly to the beneficiary. 20 Atty. Gen. 153.

Fees of a public administrator pursuant to 72.17 (3) are not payable until the inheritance tax has been determined by the court. 31 Atty. Gen. 185.

72.175 History: 1945 c. 388; Stats. 1945 s. 72.175; 1969 c. 276 s. 590 (1).

72.176 History: 1947 c. 65; Stats. 1947 s. 72.176; 1951 c. 53; 1969 c. 276 s. 590 (1).

72.18 History: 1911 c. 450; Stats. 1911 s. 1087—18; 1913 c. 627; 1913 c. 772 s. 120; 1913 c. 773 s. 92; 1921 c. 7 s. 19; Stats. 1921 s. 72.18; 1923 c. 330; 1929 c. 462 s. 2; 1929 c. 465 s. 1; 1933 c. 268; 1943 c. 20; 1961 c. 388; 1967 c. 239; 1969 c. 276 ss. 329, 590 (1).

The provisions of 72.18 (8), Stats. 1929, are applicable to the Lutheran Mutual Aid Society, notwithstanding the provisions of 208.01 (9). 19 Atty. Gen. 109.

72.19 History: 1899 c. 355 s. 17; 1903 c. 44 s. 19; Supl. 1906 s. 1087—19; 1909 c. 504; 1911 c. 530; 1917 c. 115; 1921 c. 7 s. 20; Stats. 1921 s. 72.19; 1929 c. 462 s. 1; 1949 c. 197; 1967 c. 43; 1969 c. 276 s. 590 (1).

72.20 History: 1899 c. 355 s. 18; 1903 c. 44 s. 20; Supl. 1906 s. 1087—20; 1909 c. 504; 1911 c. 663 s. 138; 1921 c. 7 s. 21; Stats. 1921 s. 72.20.

Where inheritance taxes had been collected and the county had retained its percentage, and an action was brought against the state for the refund of the tax paid after the 1921 statute had been declared unconstitutional, the county, and not the state, had the duty to refund the percentage of tax retained by the county. Schlesinger v. State, 195 W 366, 218 NW 440.

Inheritance taxes are state taxes and therefore the county treasurers are not authorized under sec. 719, Stats. 1913, to retain the percentage stated therein of such tax money turned over to the state treasurer. 3 Atty. Gen. 868.

A county is not entitled to any portion of an emergency tax on property transfers or of the state estate tax. 27 Atty. Gen. 804.

A county treasurer is entitled under 72.20, Stats. 1941, to retain 7½% of the amount of the gift tax credit applied in payment of inheritance tax. Non-retention by the county treasurer of 7½% of gift tax credit results in overpayment in error, refundable under 20.06 (2). 31 Atty. Gen. 187.

72.21 History: 1903 c. 44 s. 21; Supl. 1906 s. 1087—21; 1909 c. 504; 1913 c. 627; 1921 c. 7 s. 22; Stats. 1921 s. 72.21; 1943 c. 20; 1945 c. 33; 1949 c. 197; 1969 c. 276 s. 590 (1).

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

72.22 History: 1903 c. 44 s. 22; Supl. 1906 s. 1087—22; 1909 c. 504; 1921 c. 7 s. 23; Stats. 1921 s. 72.22; 1945 c. 33.

72.23 History: 1899 c. 355 s. 18; 1903 c. 44 s. 23; Supl. 1906 s. 1087—23; 1909 c. 504; 1911 c. 663 s. 138; 1921 c. 7 s. 24; Stats. 1921 s. 72.23.

72.24 History: 1899 c. 355 s. 19, 20; 1901 c. 245 s. 8 to 10; 1903 c. 44 s. 24; Supl. 1906 s. 1087—24; 1909 c. 504; 1911 c. 663 s. 138; 1921 c. 7 s. 25; Stats. 1921 s. 72.24; 1929 c. 462 s. 1; 1943 c. 369; 1953 c. 61.

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 72.24, Stats. 1939, 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.

72.50 History: 1931 c. 426; Stats. 1931 s. 72.50; 1945 c. 33; 1955 c. 230.

See note to 72.74, citing Estate of Miller, 254 W 24, 34 NW (2d) 404.

The discount provision of 72.06, Stats. 1951, is not applicable to the state estate tax. 40 Atty. Gen. 86.

72.51 History: 1931 c. 426; Stats. 1931 s. 72.51.

72.52 History: 1931 c. 426; Stats. 1931 s. 72.52.

72.53 History: 1931 c. 426; Stats. 1931 s. 72.53.

72.54 History: 1931 c. 426; Stats. 1931 s. 72.54.

72.55 History: 1931 c. 426; Stats. 1931 s. 72.55; 1951 c. 247 s. 29; 1955 c. 10.

72.56 History: 1931 c. 426; Stats. 1931 s. 72.56; 1955 c. 230.

72.57 History: 1931 c. 426; Stats. 1931 s. 72.57; 1943 c. 20; 1969 c. 276 s. 590 (1).

72.58 History: 1931 c. 426; Stats. 1931 s. 72.58; 1955 c. 230.

72.59 History: 1931 c. 426; Stats. 1931 s. 72.59; 1955 c. 230.

72.60 History: 1931 c. 426; Stats. 1931 s. 72.60.

72.61 History: 1931 c. 426; Stats. 1931 s. 72.61.

72.74 History: 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; Stats. 1943 s. 72.74; 1945 c. 159, 333; 1947 c. 329; 1949 c. 320; 1951 c. 261 s. 10.

Revisor's Note, 1943: This is the emergency inheritance tax. It belongs with the inheritance tax chapter. Originally ch. 15, Laws 1935, contained income and other taxes 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. (Bill 421-S, s. 14)

Under 72.01 to 72.24, Stats. 1943, imposing the state normal inheritance tax; and under 72.50, designed to secure for the state the benefit of the 80 per cent credit allowable under the federal estate tax, and therefore imposing a state estate tax in the amount of the difference between the federal credit and the amount of all state inheritance taxes; and under 72.74, imposing a state emergency tax "in addition to" and in an amount equal to 30 per cent of the state normal inheritance tax and the state estate tax—the state normal inheritance tax and the state estate tax are to be computed the same as if 72.74 did not exist, and the state emergency tax under 72.74 is to be in addition to and is to be computed on the sum of these 2 taxes, and such state emergency tax is not to be treated as a "deduction" under 72.50 so as to limit the total of state taxes imposed in any given estate to the amount of the federal credit. Estate of Miller, 254 W 24, 35 NW (2d) 404.

On remand of the record in Treichler v. State, 338 US 251, 70 S. Ct. 1 (Estate of Miller, 254 W 24), a recomputation of the state emergency inheritance tax by the department of taxation, measured by the federal estate-tax credit attributable to property located within the state, is approved by the state supreme court as accomplishing the desired purpose of avoiding the prohibited taxation of tangible property having a situs outside the state. Estate of Miller, 257 W 439, 43 NW (2d) 428.

An additional 30% tax on inheritances is invalid so far as the tax is measured by tangible property outside Wisconsin. Treichler v. Wisconsin, 338 US 251.

The discount provision in 72.06, Stats. 1951, is applicable to the emergency tax computed on the normal inheritance tax. 40 Atty. Gen. 86.

72.75 History: 1933 c. 363 s. 4 (1); 1935 c. 15 s. 7; 1937 c. 32; Spl. S. 1937 c. 14 s. 4; 1941 c. 63 s. 4; 1943 c. 367 s. 3; 1943 c. 490 s. 16; 1943 c. 513 s. 2, 3; Stats. 1943 s. 72.75 (1); 1945 c. 159 s. 5; 1945 c. 333 s. 3; 1947 c. 329 s. 3; 1949 c. 190, 634; Stats. 1949 s. 72.75; 1951 c. 510; 1957 c. 144; 1969 c. 292.

Editor's Note: 72.75 (3) as printed in Stats. 1951, 1953 and 1955, differs from sub. (3) as printed in ch. 510, Laws 1951, since the act was reenrolled after the session laws volume was published.

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. Ingram v. State, 236 W 449, 295 NW 749.

A trust agreement of 1931, creating a trust for the settlor's wife and children and himself, and reserving the power to revoke or amend any provision by a writing signed by the settlor and his wife, did not constitute a complete gift of any portion of the trust, but an amendment of 1945, whereby the settlor and his divorced wife waived all right to income or corpus, constituted a gift of the entire corpus of the trust, so as to be subject to the tax imposed by this section on gifts made subsequent to July 1, 1933, and prior to July 1, 1947. Stone v. Dept. of Taxation, 255 W 463, 39 NW (2d) 361.

Where both the donor and the donee were nonresidents of Wisconsin and the securities which were the subject of the gift had been removed to Illinois and were delivered there at the time the gift was made there, such securities did not then have a tax situs in Wisconsin by reason of the fact that for many years prior thereto they had been located in Wisconsin and administered there by the donor's agent. (Van Dyke v. Tax Comm. 235 W 128, distinguished.) Wuesthoff v. Dept. of Taxation, 261 W 98, 52 NW (2d) 131; 261 W 105, 52 NW (2d) 134.

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

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

72.76 History: 1933 c. 363 s. 4 (2); 1937 c. 263; 1943 c. 20 s. 1; 1943 c. 369 s. 11; 1943 c. 490 s. 16; 1943 c. 553 s. 15; Stats. 1943 s. 72.75 (2); 1945 c. 159 s. 5; 1945 c. 472 s. 1, 2; 1949 c. 634; Stats. 1949 s. 72.76; 1969 c. 276 s. 590 (1).

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 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. A transfer of the character described is 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 NW (2d) 852.

In determining whether a transfer is subject to gift tax, the rule that a tax cannot be imposed without clear and express language must be observed. In general, a transfer is not a "gift" when the transferor retains control and dominion of the subject of the transfer. Where joint bank accounts in the name of husband and wife, although consisting entirely of funds from earnings and investments of the husband, were subject to withdrawal in whole or in part by either the husband or the wife, there was no "gift" to the wife, within 72.76 (7), Stats. 1949, and on the death of the husband one half of the balance remaining in such accounts was not subject to the gift tax imposed by 72.75. Dept. of Taxation v. Berry, 258 W 544, 46 NW (2d) 757.

72.77 History: 1933 c. 363 s. 4 (3); 1937 c. 306; 1943 c. 490 s. 16; Stats. 1943 s. 72.75 (3); 1945 c. 159 s. 5; 1949 c. 485, 634; Stats. 1949 s. 72.77.

72.78 History: 1933 c. 363 s. 4 (4); 1937 c. 306; Spl. S. 1937 c. 14 s. 2, 3; 1943 c. 490 s. 16; Stats. 1943 s. 72.75 (4); 1945 c. 159 s. 5; 1945 c. 472 s. 1; 1949 c. 634; Stats. 1949 s. 72.78.

72.79 History: 1933 c. 363 s. 4 (5); 1937 c. 302; 1943 c. 490 s. 16; Stats. 1943 s. 72.75 (5); 1945 c. 159 s. 5; 1945 c. 569 s. 4; 1949 c. 356, 634; Stats. 1949 s. 72.79; 1951 c. 483.

Gifts to charitable organizations are favored by the law generally, and hence the words of a gift-tax exemption statute should not be accorded a strained or unusual meaning in the guise of applying a rule of strict construction but, rather, should be given their plain and ordinary meaning. Fulton Foundation v. Dept. of Taxation, 13 W (2d) 1, 108 NW (2d) 312.

Activities of a charitable foundation, consisting of the election of directors and officers at incorporation organization meetings, the adoption of bylaws, and the acceptance and retention of gifts of corporate stock from some of the incorporators, all of which activities were performed in Wisconsin, constituted "operating principally within this state," within the provisions of the gift-tax exemption statute, it being deemed that the so-called "50 per cent test" of such statute was not intended by the legislature to be exclusive. Fulton Foundation v. Dept. of Taxation, 13 W (2d) 1, 108 NW (2d) 312.

Tax considerations of charitable foundations in Wisconsin. Chester, 43 MLR 301.

72.80 History: 1933 c. 363 s. 4 (6); 1937 c. 308; 1943 c. 490 s. 16; Stats. 1943 s. 72.75 (6); 1945 c. 159 s. 5; 1949 c. 242, 485, 634; 1949 c. 643 s. 29; Stats. 1949 s. 72.80.

72.81 History: 1933 c. 363 s. 4 (7); 1937 c. 307; 1939 c. 412 s. 4; 1943 c. 20 s. 1; 1943 c. 369 s. 12; 1943 c. 490 s. 16; 1943 c. 553 s. 15; Stats. 1943 s. 72.75 (7); 1945 c. 159 s. 5; 1945 c. 309; 1947 c. 143 s. 10; 1949 c. 113, 634; Stats. 1949 s. 72.81; 1955 c. 17; 1965 c. 638; 1969 c. 276 ss. 330, 590 (1).

A county court has no jurisdiction to determine that there is no gift-tax liability to the state on the part of a decedent or his estate, despite the general provisions of 253.03 (1) and 310.14, Stats. 1955. Estate of Michels, 3 W (2d) 353, 88 NW (2d) 726.

CHAPTER 73.

Tax Appeals Commission; Department of Revenue.

73.01 History: 1939 c. 412; Stats. 1939 s. 73.01; 1943 c. 20; 1947 c. 562; 1949 c. 30, 112, 360; 1951 c. 97 s. 33; 1951 c. 319 s. 231; 1951 c. 325; 1955 c. 234; 1963 c. 225; 1963 c. 280 s. 6; 1963 c. 372; 1963 c. 459 s. 26; 1965 c. 592; 1967 c. 43, 109; 1969 c. 276 ss. 331, 332, 333, 582 (12), 590 (1), (2), 606; 1969 c. 392 s. 87 (5).

On remedies for wrongs see notes to sec. 9, art. I; on judicial power generally see notes to sec. 2, art. VII; and on administrative procedure and review see notes to various sections of ch. 227.

A certification by the department of taxation pursuant to 76.27 and 76.28, Stats. 1943, for the distribution of utility taxes to municipalities is not reviewable by the board of tax appeals. Kaukauna v. Dept. of Taxation, 250 W 196, 26 NW (2d) 637.

The board of tax appeals, on appeal to it from an additional assessment of income taxes, has no power under 71.11 (19) and 73.01 (5) (a), Stats. 1947 and 1949, to increase the assessment over the amount determined by the department in the notice of assessment appealed from. Under 73.01 (6) (a), a petition filed with the board of tax appeals for the review of a determination of the department denying an application for abatement or claim for refund is "for review of the action of the department or assessor," and such section