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

does not contemplate that the department, in denying an application for abatement or claim for refund, can change its position and assess different or new items of additional tax before the board and the board reassess an additional tax, but the proper procedure is an audit by the department if the year is still open. Dept. of Taxation v. Blatz Brew. Co. 12 W (2d) 615, 108 NW (2d) 319.

The board of tax appeals and the department of taxation are entirely separate agencies; and it necessarily follows that no member or employe of the board would have authority to admit service, of a copy of a petition for review, on behalf of the department. Monahan v. Dept. of Taxation, 22 W (2d) 164, 125 NW (2d) 331.

The duties of the board of tax appeals are almost entirely, if not entirely, quasi-judicial as distinguished from legislative. State ex rel. Thompson v. Nash, 27 W (2d) 183, 133 NW (2d) 769.

The statutes prescribing the procedure for contesting an income tax assessment (71.12 (1), 73.01 (5) (a) and 73.015 (1)) make it patent that compliance with such procedure is mandatory where the validity of a gift tax assessment is challenged and, subject to judicial review under ch. 227, the board of tax appeals has exclusive jurisdiction to hear and determine all controversies arising under the tax laws of the state. Metzger v. Dept. of Taxation, 35 W (2d) 119, 15 NW (2d) 431.

The issuance of a subpoena duces tecum by the department of taxation pursuant to 71.11 (20) and 73.03 (9), which subpoena on its face calls for information beyond the limitation periods specified in 71.11 (21) (a), (bm) and (g), constitutes a determination of law or fact within the meaning of 73.01 (5) (a). Neu's Supply Line, Inc. v. Dept. of Taxation, 39 W (2d) 584, 159 NW (2d) 742.

73.015 History: 1939 c. 412; Stats. 1939 s. 73.015; 1943 c. 375 s. 13, 14; 1945 c. 511; 1967 c. 109; 1969 c. 276 s. 582 (12), (15); 1969 c. 392 s. 87 (22).

Where the result can only be reached by the application of rules of law to the undisputed facts, a determination of the board of tax appeals is not a determination on a question of fact so as to be conclusive on review if supported by evidence. Ryan v. Dept. of Taxation, 242 W 491, 8 NW (2d) 393.

Where the paper evidences of a portion of the intangible assets of the corpus were present in Milwaukee county during part of the year of 1952, this was sufficient, under 73.015 (1), to confer jurisdiction on the circuit court for Milwaukee county for the purpose of determining whether the trusts in issue were "administered" in this state within the meaning of 71.08 (8) for the years 1952, 1953, and 1954. Dept. of Taxation v. Pabst, 15 W (2d) 195, 112 NW (2d) 161.

73.02 History: 1939 c. 412; Stats. 1939 s. 73.02; 1947 c. 332, 545; 1949 c. 17, 405; 1951 c. 97 s. 34; 1951 c. 319 s. 231; 1951 c. 727; 1953 c. 10; 1957 c. 263; 1959 c. 19; 1963 c. 225; 1965 c. 163 ss. 77, 77a; 1965 c. 433 s. 93; 1965 c. 472, 625; 1967 c. 26; 1967 c. 291 s. 14; 1969 c. 276 ss. 334, 335, 336.

73.03 History: 1905 c. 380 s. 9; Supl. 1906 s. 1087—39; 1911 c. 523; 1911 c. 658; Stats. 1911 s. 1087m—20 sub. 2, 1087—39; 1913 c. 221; 1913 c. 769 s. 23; 1921 c. 11 s. 10; 1921 c. 65 s. 31; Stats. 1921 s. 71.16 (2), 73.03; 1923 c. 75; 1925 c. 98; 1927 c. 129, 343; 1927 c. 539 s. 17; Stats. 1927 s. 73.03; 1929 c. 262 s. 13; 1933 c. 461 s. 3; Stats. 1933 s. 73.03, 109.03 to 109.05; 1935 c. 414; 1939 c. 412, 483; 1939 c. 513 s. 25; 1941 c. 221; 1943 c. 20, 213, 432; 1947 c. 300, 472; 1949 c. 17 s. 11; 1949 c. 30; Stats. 1949 s. 73.03; 1953 c. 184 s. 2; 1959 c. 459; 1959 c. 659 s. 79; 1961 c. 621; 1963 c. 279; 1965 c. 163, 433; 1967 c. 26, 109; 1969 c. 202; 1969 c. 276 ss. 337, 582 (15), 590 (1), (2), (3); 1969 c. 392 s. 87 (31); 1969 c. 433.

The state department of taxation can contest the constitutionality of a tax exemption on the ground that it violates the equal protection of the laws clause of the federal constitution. Fulton Foundation v. Dept. of Taxation, 13 W (2d) 1, 108 NW (2d) 312.

The tax commission is without power to pass upon the constitutionality of a tax exemption statute. 26 Atty. Gen. 152.

Function and effect of department rules relating to income tax. Marcuritz, 40 MLR 414.

Testing validity of income tax rule by declaratory judgment action under 227.05. Maly, 41 MLR 446.

73.04 History: 1905 c. 380 s. 10; Supl. 1906 s. 1087—40; 1911 c. 506; Stats. 1911 s. 1087—40, 1087—40a; 1913 c. 772 s. 120; 1921 c. 11 s. 11, 12; Stats. 1921 s. 73.04; 1927 c. 523 s. 30; 1927 c. 539 s. 25; 1939 c. 412; 1943 c. 20; 1945 c. 34; 1969 c. 276 ss. 339, 590 (1).

The authority "to appoint one of its members, or its secretary or engineer, to act for it, to investigate and make report upon any matter pending before it," etc., is limited to purely administrative duties and does not extend to those of a judicial nature. State ex rel. Ruemmele v. Haugen, 160 W 494, 152 NW 176.

73.05 History: 1911 c. 658; Stats. 1911 s. 1087m—8; 1913 c. 443; 1919 c. 93 s. 21; 1919 c. 362 s. 19; 1921 c. 65 s. 9; Stats. 1921 s. 71.07; 1929 c. 263 s. 6; Stats. 1929 s. 73.06; 1933 c. 222 s. 1, 2; 1937 c. 389; Stats. 1937 s. 73.05; 1939 c. 99; 1943 c. 20, 369; 1951 c. 285; 1969 c. 276 s. 590(1).

The assessors of incomes are state officers, possessing all powers granted by law to the tax commission or to assessors in the assessment of personal property, and have authority to make investigations and audits of the books and records of individuals or firms to determine the taxability of their income or interests. Wagner v. Leenhouts, 208 W 292, 242 NW 144.

73.06 History: 1901 c. 445 s. 4 to 10; 1903 c. 316 s. 2; 1905 c. 523 s. 4; Supl. 1906 s. 772d to 772j; 1913 c. 443; Stats. 1913 s. 1087b; 1921 c. 69 s. 129; Stats. 1921 s. 70.75; 1929 c. 263 s. 2; Stats. 1929 s. 73.05; 1933 c. 222 s. 2; 1937 c. 389; Stats. 1937 s. 73.06; 1943 c. 20; 1947 c. 229, 502; 1957 c. 505; 1969 c. 276 s. 590 (1); 1969 c. 433.

Although an assessment for tax purposes made by the local assessor is prima facie correct, the report of the assessor of incomes (now supervisor of assessments), showing the relative assessed and true value of property in

each assessment district, constitutes presumptive evidence of the relative assessed and true value of property in each assessment district. Peninsular P. Co. v. Tax Comm. 195 W 231, 218 NW 371.

A county judge cannot hold the office of supervisor of assessments. 1902 Atty. Gen. 168.

73.07 History: 1911 c. 658; Stats. 1911 s. 1087m—9; 1913 c. 487; 1921 c. 65 s. 10, 11; Stats. 1921 s. 71.08; 1925 c. 446 s. 2; 1927 c. 539 s. 7; 1929 c. 263 s. 6; Stats. 1929 s. 73.07; 1933 c. 222 s. 2; 1933 c. 367 s. 3; 1933 c. 450 s. 5; 1935 c. 414; 1939 c. 412; 1943 c. 20; 1947 c. 472, 600; 1951 c. 121; 1957 c. 15; 1959 c. 659 s. 79; 1965 c. 246; 1969 c. 276 ss. 582 (12), (15), 590 (1).

On consolidation of 2 or more income-tax assessment districts the income tax assessor for the consolidated district is entitled to possession of records and files, also of office furniture and equipment, in the offices of the assessors for the former districts. 18 Atty. Gen. 208.

73.08 History: 1951 c. 116; Stats. 1951 s. 73.08; 1969 c. 433.

CHAPTER 74.

Collection of Taxes.

74.01 History: 1850 c. 105 s. 3; R. S. 1858 c. 18 s. 160; 1859 c. 22 s. 31; 1872 c. 179; R. S. 1878 s. 1088; Stats. 1898 s. 1088; 1901 c. 190 s. 1; Supl. 1906 s. 1088; 1921 c. 17 s. 2; Stats. 1921 s. 74.01.

Taxes are debts due the state, and when charged on lands the latter constitute a fund out of which they are to be paid. Curtis v. Brown County, 22 W 167.

Taxes reassessed are a debt and a lien from the time the original assessment should have been a lien. Flanders v. Merrimack, 48 W 567, 4 NW 741.

A complaint, in an action by a trustee for mortgage noteholders against the mortgagor and the mortgagee of another tract owned by the mortgagor, alleging, among other things, that the trustee by mistake paid delinquent taxes on such other mortgaged tract, and praying that the trustee be adjudged to have a lien on such tract equivalent to the lien of a holder of a tax sale certificate, states a cause of action entitling the trustee by subrogation to the lien given by 74.01, Stats. 1935. Central Wisconsin T. Co. v. Swenson, 222 W 331, 267 NW 307.

A prior mortgage lien of the United States is superior to subsequent real estate tax liens of a county, village, and town. United States v. Davis Mining Enterprises, 187 F Supp. 911.

74.02 History: R. S. 1849 c. 15 s. 55; R. S. 1858 c. 18 s. 69, 71; R. S. 1878 s. 1089; 1881 c. 269 s. 2; Ann. Stats. 1889 s. 1089; Stats. 1898 s. 1089; 1899 c. 335 s. 4; Supl. 1906 s. 1089; 1921 c. 17 s. 3; Stats. 1921 s. 74.02; 1933 c. 426; 1935 c. 79, 456; 1937 c. 262, 323; 1939 c. 385; 1943 c. 133.

74.025 History: 1965 c. 63; Stats. 1965 s. 74.025.

74.03 History: 1850 c. 105 s. 2; R. S. 1858 c. 18 s. 70; 1861 c. 91; R. S. 1878 s. 1090; 1881 c. 269 s. 3; Ann. Stats. 1889 s. 1090; Stats. 1898 s. 1090; 1899 c. 335 s. 5; Supl. 1906 s. 1090; 1911 c. 273; Stats. 1911 s. 959—70o, 1090; 1913 c. 665; 1915 c. 1; 1921 c. 6; 1921 c. 17 s. 4, 5; 1921 c. 422 s. 35; 1921 c. 523; Stats. 1921 s. 74.03; 1927 c. 348; 1929 c. 441; 1933 c. 244, 426; 1935 c. 2, 396, 456; 1937 c. 294, 323; 1939 c. 385, 434; 1943 c. 15, 124, 133, 466; 1943 c. 553 s. 16; 1945 c. 151, 168, 588; 1951 c. 12, 358, 467, 482; 1953 c. 61; 1955 c. 10, 110, 249, 652, 694; 1957 c. 61, 97, 257; 1957 c. 610 s. 32, 33; 1959 c. 19, 565; 1963 c. 73, 572; 1965 c. 63; 1967 c. 92 s. 22; 1969 c. 486.

An illegal excess in the taxes, if known and separable, is no excuse for the nonpayment of the valid portion. Whittaker v. Janesville, 33 W 76.

One paying taxes has the right to rely upon the statement of the amount due made by the officer; and where the amount given was $14.21 when it should have been $14.46, a payment of the smaller amount was sufficient, on the maxim de minimis, etc. Randall v. Dailey, 66 W 285, 28 NW 352.

A county is not entitled to credit against the claim of a town for delinquent taxes collected by the county treasurer during a given period, for uncollected taxes returned by the town in the delinquent list of a subsequent period. Bell v. Bayfield County, 206 W 297, 239 NW 503.

A settlement between village and county treasurers, whereby the village was credited with a taxpayer's delinquent taxes unlawfully assessed by such village, constituted collection by the village treasurer entitling the taxpayer to recover from the village the taxes, but not penalties and accrued interest, paid to the county under protest. Fox Valley C. Co. v. Hortonville, 207 W 502, 242 NW 142.

The provisions of 74.15 (2), Stats. 1939, relating to the order of payment of collected taxes, do not prescribe or control the application of moneys after receipt thereof by a school district from such a treasurer, as against the contention that school funds of the defendant school district, on deposit in the garnishee bank, should not be subjected to garnishment or execution under 66.09 because such funds have a priority over the payment of judgments. State Bank of Florence v. School Dist. 233 W 307, 289 NW 612.

Ch. 294, Laws 1937, amended ch. 426, Laws 1933, even though the latter did not become effective until 1941. 30 Atty. Gen. 257.

Ch. 426, Laws 1933, providing for semi-annual payment of real estate taxes, became operative and effective on October 1, 1941; its effect upon provisions of ch. 1, Laws 1941 (74.037, Stats. 1941), 62.21 (1) (h) 1a, and 74.03 (1) and (2), Stats. 1939, was considered in 30 Atty. Gen. 370.

74.03, Stats. 1941, providing for payment of one-half of real estate taxes by January 31, refers to taxes on each parcel of land as separately assessed and taxed and does not require a taxpayer owning more than one parcel to pay one-half of aggregate taxes on all parcels. 31 Atty. Gen. 1.

The 6% maximum interest limitation provided by sec. 500 (4) of the soldiers' and sailors' civil relief act of 1940 (54 Stats. 1186, October 17, 1940, ch. 888) (50 USC, sec. 560) is applicable to delinquent real estate taxes fall-