

[No. 468, S.]

[CORRECTED COPY]

CHAPTER 510, LAWS OF 1951

AN ACT

To amend 72.01 (5) and 72.75 (3) and to repeal and recreate 72.15 (8m) of the statutes, relating to inheritance and gift taxation of certain powers of appointment.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 72.01 (5) of the statutes is amended to read:

72.01 (5) Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property, made either before or after the passage of sections 72.01 to 72.24, inclusive, such appointment, when made, shall be deemed a transfer taxable under the provisions of sections 72.01 to 72.24, inclusive, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefore, in whole or in part, a transfer taxable under the provisions of sections 72.01 to 72.24, inclusive, shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure. *For the purpose of this section, the term "power of appointment" means any power to appoint exercisable by any person either alone or in conjunction with any other person, except a power to appoint within a class which excludes the donee of the power and is restricted to the husband, wife, lineal issue, the wife or widow of a son and the husband of a daughter of the creator of the power; provided that such power was created on or after October 21, 1942, or if created prior to October 21, 1942 was subsequently modified or limited by release or otherwise to the type of restricted power described herein; and provided further that this exception shall not include any power to appoint, whether exercised or*

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not, under which another power to appoint may be created. As used in this paragraph the term lineal issue shall include an adopted child and a mutually acknowledged child as defined in section 72.02 (1).

SECTION 2. 72.15 (8m) of the statutes is repealed and recreated to read:

72.15 (8m) A transfer of an estate for life or for years or of a beneficial interest in property accompanied by a power of appointment as defined in section 72.01 (5) over the remainder shall be taxed to the life or term tenant or transferee of the beneficial interest as the transfer of absolute ownership, provided, however, that where the power is excluded from the definition of a power of appointment as defined in section 72.01 (5) then the remainder interest subject to the power shall be 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 such a manner as will result in the imposition of the largest amount of tax. Upon the exercise or release of such 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 re-determined to accord with the ultimate devolution of the property. Any excess tax determined to have been paid shall, upon application to the department of taxation, be refunded forthwith and without interest to the residual beneficiaries of the estate of the donor of the power, or to their respective heirs and assigns.

SECTION 3. 72.75 (3) of the statutes is amended to read:

72.75 (3) From and after January 1, 1944, whenever any person shall exercise or release a power of appointment derived from any disposition of property, whether heretofore or hereafter made, such exercise or release, whether in whole or in part, shall be deemed a transfer of property taxable in the same manner as though the property to which such power of appointment relates belonged absolutely to the person possessing such power. For the purpose of this section the term "power of appointment * * *" means any power to appoint exercisable by any person either alone or in conjunction with any other person, *except a power to appoint within a class which excludes the donee of the power and is restricted to the husband, wife and lineal issue of the creator of the power, provided that such power was created on or after October 21, 1942, or if created prior to October 21, 1942, was subsequently modified or limited by release or otherwise to the type of restricted power described herein; and provided further that this exception shall not include any power to appoint, whether exercised or not, under which another power to appoint may be created. As used in this subsection, the term lineal issue shall include an adopted child and a mutually acknowledged child as defined in section 72.02 (1).*

Senate: Ayes, 26; Noes, 0.

Assembly: Ayes, 81; Noes, 0.

PRESIDENT OF THE SENATE.

SPEAKER OF THE ASSEMBLY.

This act originated in the Senate.

CHIEF CLERK.

Approved _____, 1951.

GOVERNOR.