

## Chapter Tax 10

## INHERITANCE TAX

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Note: Chapter Tax 10 Oil inspection was repealed and a new chapter Tax 10 Inheritance tax was created effective July 1, 1975.

**Tax 10.01 Accrual of interest on notes, deposits and securities.** (section 72.12, Wis. Stats.) (1) For inheritance tax purposes the accrued interest on interest bearing property should be separately reported for that period from the date of the last preceding interest payment to the date of death at the rate payable if held to maturity. A reduced rate or penalty provided for withdrawal or surrender prior to the maturity date may not be used.

(2) Amounts forfeited by premature withdrawal or surrender shall be considered as expenses of administration. The amount forfeited may be claimed as a deduction for inheritance tax purposes under section 72.14 (1) (c), Wis. Stats., only:

(a) If the premature withdrawal of the funds is shown to be necessary for the payment of other allowable deductions of the estate under section 72.14, Wis. Stats.; and

(b) To the extent not claimed for income tax purposes.

(3) The above procedures apply to transfers by deaths on and after July 1, 1975.

History: Cr. Register, June, 1976, No. 234, eff. 1-1-75.

**Tax 10.05 Taxation of joint tenancy property and establishing contribution for deaths on or after May 14, 1972 and before July 1, 1976.** (section 72.12(6), Wis. Stats.) (1) THE STATUTE. The full clear market value of property held by 2 or more persons in joint tenancy with a right of survivorship (hereafter "joint property"), upon the death of one of those persons on or after May 14, 1972 and before July 1, 1976 is subject to the inheritance tax regardless of the relationship of the joint tenants to each other. The 2 statutory exceptions are the following:

(a) Property is exempt from taxation if the property or the consideration with which it was acquired, or any part of either, is shown to have originally belonged to the survivor. Such property or consideration must not have been received or acquired by the survivor from the decedent for less than adequate and full consideration in money or money's worth. Any lifetime conveyance into joint tenancy from the decedent to the surviving tenant regardless of whether it results in a taxable transfer does not constitute contribution by the survivor in the decedent's estate. Any gift tax paid on the lifetime conveyance is returned as provided in section 72.87, Wis. Stats.

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(b) Property is exempt if it was acquired by the survivor by gift from someone other than the decedent or if it was inherited.

(2) **JOINT PROPERTY OR CONSIDERATION IN MONEY OR MONEY'S WORTH ORIGINATING WITH THE SURVIVOR.** (a) If all of the joint property or the consideration used to acquire it originally belonged to the survivor and if the decedent did not furnish any part of it, then no part of the value of the joint property is subject to the inheritance tax.

(b) If only part of the joint property or the consideration used to acquire it originally belonged to the survivor, then the ratio of the contribution provided by each joint tenant to the total contributions provided is applied against the value of the property at death (which include unrealized gain on this property). The value of that part of the property attributable to the survivor is not subject to inheritance tax.

(c) If equal contribution in money or money's worth was made by each joint tenant, the taxable portion is computed by dividing the total value of the property by the number of the joint tenants including the decedent.

(d) Consideration in "money's worth" may include a joint tenant's continuing contribution of services, industry and skills in a jointly-owned business operation (such as retail or manufacturing business or a farming operation) toward the production of income which is used to acquire the joint property. The basis for a claim of consideration in "money's worth" based on the contribution of services shall be set forth in each estate where less than the full clear market value of joint property is included for inheritance tax purposes. The contribution of services must be substantial. In determining the value of these services, the following shall be considered:

1. The length of time during which services were contributed over the period of ownership of the property.
2. The length of the joint tenancy ownership.
3. The length of the marriage, if the survivor is a surviving spouse.
4. The nature and frequency of the survivor's services, industry and skills in the business operation.

(3) **REALIZED APPRECIATION, PROFITS AND INCOME FROM JOINT PROPERTY.**

(a) Wisconsin income tax law controls the allocation between joint tenants of the realized appreciation, income and profits derived from joint property.

(b) If appreciation is realized on the disposition of joint property and the proceeds are reinvested in other joint property, the joint tenants would have equal contribution to the extent of these gains regardless of proportionate contribution to the acquisition of the original joint property.

(c) If the joint property is investment property (from which income shall or is expected to result from mere ownership rather than income resulting from actual operation of a business upon the property), then income and profits therefrom shall be split for income tax purposes. If the income or profits are then applied to payment of a mortgage on the property or are used to purchase additional joint property, then each joint tenant shall have equal contribution from the income and profits. If

(d) If the solely owned account is paid to a distributee who had been designated by the decedent prior to death, the insurance proceeds qualify for the \$10,000 exclusion.

(2) **MORTGAGE AND CREDIT INSURANCE.** Life insurance payments made to a creditor upon death of a debtor shall reduce the deduction otherwise allowable in section 72.14(1)(a), Wis. Stats., as follows:

(a) If the debt was secured by the debtor's solely owned property, the insurance shall reduce the deduction otherwise allowable in section 72.14(1)(a), Wis. Stats., as a debt of the decedent to the extent of the payment. The payment credited to the debt shall not be taxable under section 72.12(7), Wis. Stats., unless it exceeds the debt.

(b) If the debt is secured by joint tenancy property, the payment of insurance in satisfaction of part or all of the debt shall be considered insurance payable to the surviving joint tenant or tenants in the same manner as to a named beneficiary and shall qualify for the \$10,000 insurance exclusion. This payment shall not reduce the deduction otherwise allowable under section 72.14(1)(a), Wis. Stats.

*History:* Cr. Register, February, 1978, No. 266, eff. 3-1-78.

**Tax 10.11 Federal estate tax deduction** (sections 72.14(1)(e) and S. 72.14(2), Wis. Stats.) (1) In computing the taxable estate for Wisconsin inheritance tax purposes, a deduction shall be allowed for federal estate taxes paid on the taxable value of an estate.

(2) To qualify as a Wisconsin inheritance tax deduction, the following conditions must be met:

(a) The federal estate tax must be imposed and paid to the United States government.

(b) The Wisconsin deduction cannot exceed the actual federal tax paid.

(c) The value of each separate item of property on which the deduction is computed shall not exceed the value used for the Wisconsin tax determination. Each item shall be considered individually and a higher value of one item may not offset a lower value on another item.

(d) In making the deduction computation, no asset's value shall exceed the value of that asset used for federal estate tax purposes. Further, no adjustment is permitted for the difference between the federal gross estate and the gross estate used for Wisconsin inheritance tax purposes.

(3) The procedures to follow in computing the allowable federal estate tax deduction on Schedule L (Form HT-026) are as follows:

(a) Reduce the federal gross estate as finally determined by the amount which the value of any asset included for federal estate tax purposes exceeds the value of the asset for Wisconsin inheritance tax purposes. When property is included for federal estate tax purposes but not for Wisconsin inheritance tax purposes, reduce the federal gross estate by the full value of all such property. This includes any portion of joint tenancy property included for federal estate tax purposes and not for Wisconsin inheritance tax purposes, such as the portion of joint tenancy property excluded from inheritance tax as any fractional share of a surviving joint tenant.

(b) Recompute the federal estate tax. As necessary, use the actual debts, burial and administration expenses, and recompute the proper marital deduction considering the reduced federal gross estate, the will of the decedent and/or the Wisconsin Statutes.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78.

**Tax 10.12 Deductibility of income taxes.** (section 72.14 (1) (a), Stats.) (1) **TAXES OF DECEDENT.** Any Wisconsin income taxes, together with interest and penalties thereon, attributable to taxable income of any period prior to decedent's date of death and due from a decedent but unpaid on decedent's date of death shall be deductible from the decedent's estate for inheritance tax purposes as a debt.

(2) **TAXES OF FIDUCIARY.** Any Wisconsin income taxes, together with interest and penalties thereon, attributable to the taxable income of the decedent's estate and due but unpaid shall not be deductible from the decedent's estate for inheritance tax purposes as a debt.

History: Cr. Register, March, 1978, No. 267, eff. 4-1-78.