Chapter Tax 10

INHERITANCE TAX

Note: Chapter Tax 10 Oil inspection was repealed and a new chapter Tax 10 Inheritance tax was created effective July 1, 1975.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. (s. 72.12, 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 s. 72.14 (1) (c), 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 s. 72.14, 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, 1975, 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. (s. 72.12 (6), 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 consitute contribution by the survivor in the decedent's estate. Any gift tax paid on the lifetime conveyance is returned as provided in s. 72.87, Stats.

(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 income and profits from a business conducted with joint property cannot be split for income tax purposes but substantial services generated income used to pay off a mortgage on the joint property or to purchase additional joint property, contribution on the basis of those services can be established by the other joint tenant.

(4) JOINT PROPERTY OR CONSIDERATION ORIGINATING WITH THE DECEDENT. If the joint property or the consideration used to acquire it, or any part of either, originated with the decedent without adequate consideration being given by the survivor, then the value of the property so originating is subject to the inheritance tax.

(a) If all or part of the joint property or the consideration used to acquire it was originally a gift from the decedent to the survivor, the value of the gift shall not be regarded as contribution.

(b) The income, profits and realized appreciation or gain from property which was given by the decedent to the survivor, when applied to the acquisition of joint property, shall be regarded as contribution although the value of the original gift shall not be. Unrealized appreciation on property given by the decedent to the survivor is not regarded as contribution by the survivor.

(c) Stock dividends accruing from property given by the decedent to the survivor are not attributable to the survivor, thus differing from cash dividends, and are, therefore, includable in the decedent's estate.

(d) When joint property originated with the decedent, it is necessary to determine whether the survivor received from the decedent any part of the property or consideration used to acquire it for less than adequate and full consideration in money or money's worth. The value of property originating with the decedent may be attributed to the survivor if the survivor provided adequate and full consideration for the property.

(e) Property acquired by one spouse prior to a marriage and transferred into joint tenancy with the other spouse without adequate consideration is taxable to the extent of that part not attributable to monetary contribution of the survivor. If both spouses have property in sole names prior to marriage and transfer some or all of the property into joint tenancy after marriage, the taxable or excludable portions will be determined by contribution of property made by each to the joint tenancies.

(f) Joint tenancy property brought into the state is taxable on the basis of contribution by the tenants, with the exception of that property brought in the state from a community property state.

(g) In this section:

1. Relinquishment of marital rights (dower, curtesy or homestead rights) or relinquishment of a right of survivorship does not constitute consideration in money or money's worth for the acquisition of an interest in joint property. But transfers into joint tenancy as consideration

for relinquishment of support or property rights in a divorce may be regarded as consideration.

2. Payment of a debt, excluding a debt on joint property, of one joint tenant by the other joint tenant is not consideration for acquisition of an interest in joint property unless there is sufficient evidence of an agreement that it is to be regarded as consideration.

3. To meet the burden of proving a survivor's contribution to a joint bank account, evidence must show both the sources of deposits and the nature of withdrawals. When both joint tenants (including joint tenancies between spouses) have acquired income and deposited it in joint accounts, the proportion of their gross incomes shall be accepted as a measure of the contribution of each to joint accounts, unless adequate proof of a different arrangement is shown. These criteria apply in determining contribution to joint property purchased with the funds from a joint bank account.

4. If joint property is purchased using a mortgage, the deduction allowed on the outstanding balance on the date of death is computed as follows:

$$\frac{\text{portion of fair market value included in estate,}}{\text{fair market value on date of death}} \times \text{mortgage on date of death} = \text{allowable deduction}$$

5. If the surviving joint tenant expended funds for improvements on the joint property, then these expenditures are considered contributions toward the joint property by the survivor.

(5) PROVING CONTRIBUTION. (a) The survivor shall show that he or she contributed to the acquisition of joint property. If the survivor does not so show, the entire value of the joint property shall be taxed.

(b) A surviving joint tenant claiming contribution shall include, with Wisconsin inheritance tax return, an affidavit setting forth sufficient information to show the previous ownership of the property, the dates of acquisition, the services involved, the type of consideration used to acquire it (i.e., cash, joint or individual savings, mortgages or notes), the sources of the consideration and the available documentation of the information. The following types of information may be included in an affidavit:

1. Whether a down payment was made and, if so, its source.

2. Whether there are or were mortgages on the property and, if so, the amount of unpaid balance and whose funds were used to pay off the mortgage.

3. Comparative incomes or services or both of joint tenants prior to and during acquisition, including dates of employment, documentation of incomes, when and where these funds were deposited and withdrawn, and whether any part was retained separately by one joint tenant.

4. Other sources of funds to any joint tenant (e.g., gifts, inheritances, insurance proceeds and judgments), including dates received and what was done with these funds (e.g., placed in joint account).

5. Any separate acquisitions by a joint tenant, with the dates of acquisition and source of funds for acquisition.

6. Whether joint property was purchased with the proceeds from the sale of or from the income derived from other joint property, or whether a mortgage was paid off by income from that or other joint property. If so, income tax returns shall be included to show whether it is investment or business property.

7. Whether the joint property was purchased with funds from joint bank accounts and the sources of funds in those accounts.

8. Whether there were any agreements between the joint tenants which would affect equity in the property (e.g., a partnership agreement or an agreement that one joint tenant pay debts of the other).

9. Whether the joint property was purchased from the sale of assets given to the survivor by the decedent or whether the joint property was purchased from the income derived from assets given to the survivor by the decedent. In either case, whether adequate consideration was given by the survivor for these gifts shall be indicated.

10. Improvements on the property and sources of the funds, materials of labor.

Note: Section 72.12(6), Stats., relating to the inheritance taxation of joint tenancy property, was enacted by the 1971 legislative session and applies to all deaths which occur on and after May 14, 1972 and prior to July 1, 1976. Chapter 310, Laws of 1971, which enacted this statute contains the following note after the joint tenancy provision: "Sub. (6) is patterned after s. 291.01 subdivision 4(1), Minn. Stats. and I.R.C. s. 2040 to tax the transfer of jointly held property in the same manner as the fereral method."

Under a literal reading of the statute, if property is owned in joint tenancy and one joint tenant dies, the decedent is presumed to have initially acquired the full value of the asset and the survivor or survivors are presumed to inherit and are taxed on the property's full value. A surviving joint tenant will not be subject to the inheritance tax, however, on any portion of the property to which the survivor can show he or she actually contributed.

In *Department of Revenue v. Kersten* (1976), 71 Wis. 2d 757, the court held that contribution is not limited to money or property, but includes the "services, industry and skills" of a joint tenant in the operation of a farm enterprise.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Tax 10.06 Taxation of joint tenancy property for deaths on or after July 1, 1976. (ss. 72.01(12), 72.12(4)(a) and (6), 72.13 and 72.85(4), Stats.) Property held by 2 or more persons with the right of survivorship (hereafter "joint property") shall have the value subject to inheritance tax determined as follows:

(1) COMPLETED TRANSFERS. Any joint property requiring the signature of all joint tenants to transfer the entire property which, to the extent of unequal monetary contribution, was deemed a gift at the time of its acquisition or the creation of the joint tenancy and any subsequent increments thereto shall have its taxable value determined by dividing the joint property's date of death clear market value, less any liens against the property, by the number of joint tenants on the date of death including the decedent.

(2) INCOMPLETE TRANSFERS. (a) The full date of death clear market value of any joint property requiring the signature of only one joint tenant to transfer the entire property which, to the extent of unequal monetary contribution, was not deemed to be a gift at the time of its acquisi-

tion or the creation of the joint tenancy and any subsequent increments thereto shall be subject to inheritance tax. Any portion contributed in money or money's worth by the survivor, as described in Tax 10.05, may be excluded.

(b) Unless there is a clear showing to the contrary, the allocation of contribution in money or money's worth shall apply equally to all joint property held by the same joint tenants. The amount is computed as follows:

$$\frac{\text{dollar amount of survivor's contribution to date of death}}{\text{full clear value of all joint property at death}} \times \text{full clear market value of each asset} = \text{survivor's contribution to each asset}$$

(3) TRANSFERS IN CONTEMPLATION OF DEATH. Any joint tenancies created or joint tenants added within 2 years of a decedent's date of death are covered by s. 72.12(4)(a), Stats.

Note: *Example #1:* The following example shows how to compute the taxable and tax exempt portions of joint property under sub. (1). Assume that the full clear market value of a farm owned in joint tenancy by husband, wife and child is $120,000; that a mortgage of $30,000 exists against the farm and that the husband dies:

Date of death full clear market value	$ 120,000
Subtract mortgage outstanding on date of death	−30,000
Subtotal	$ 90,000
Divide by number of joint tenants at time of death	÷ 3
Amount subject to inheritance tax	$ 30,000
Joint tenancy exemption	$ 60,000

The fractional share times the number of surviving tenants (2) equals the joint tenancy exemption for deaths prior to January 1, 1978. On or after January 1, 1978, there is no joint tenancy exemption; the survivor's interests are excluded; and, only the decedent's interest is included in the taxable estate ($30,000).

Example #2: The following example shows how to compute the survivor's contribution to joint property under sub. (2)(b). Assume that the surviving joint tenant contributed $20,000 to a farm with a $120,000 date of death value and that the survivor also acquired a $20,000 joint savings account from decedent:

farm:

$$\frac{\$20,000}{\$140,000} \times \$120,000 = \$17,142.86$$

savings account:

$$\frac{\$20,000}{\$140,000} \times \$20,000 = \$2,857.14$$

While the real estate will be included for inheritance tax at fractional share without considering contribution, it will be necessary to allocate a prorata share of monetary contribution to *all* joint assets unless it can be clearly traced to a specific asset. In this example, $2,857.14 is available for contribution to the savings account unless it can be clearly shown otherwise.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Tax 10.10 Taxation of savings, mortgage and credit life insurance. (ss. 72.12 (7), 72.13 (2) and 72.14 (1) (a), Stats.) (1) SAVINGS INSURANCE. If, upon the death of a depositor in a financial institution, a life insurance payment is made based on the amount in a savings account of the decedent at the time of death, such payment is taxable as insurance under s.

72.12 (7). If death is on or after July 1, 1979, the full amount is included as a taxable transfer. If death is prior to July 1, 1979, the following paragraphs identify the extent of the application of the $10,000 insurance exclusion.

(a) If the payment is made to a named beneficiary, it shall be includible with other insurance proceeds paid to distributees other than the decedent's estate and shall qualify for the $10,000 insurance exclusion provided in s. 72.12 (7) (b), Stats.

(b) If the payment is made to the financial institution and is added to the decedent's account, and if the account was held in joint tenancy, the account will then be paid to the surviving joint tenants. The insurance portion of the account qualifies for the $10,000 insurance exclusion.

(c) If the account is solely owned and is paid to the personal representative of the decedent's estate or to the estate itself, the portion of the account representing insurance proceeds shall not qualify for the $10,000 insurance exclusion.

(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 s. 72.14 (1) (a), 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 s. 72.14 (1) (a), Stats., as a debt of the decedent to the extent of the payment. The payment credited to the debt shall not be taxable under s. 72.12 (7), 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 if death is prior to July 1, 1979. There is no insurance exclusion if death is on or after July 1, 1979. This payment shall not reduce the deduction otherwise allowable under s. 72.14 (1) (a), Stats.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (1) (intro.) and (2) (b), Register, July, 1982, No. 319, eff. 8-1-82.

Tax 10.11 Federal estate tax deductions for deaths on or after July 1, 1979. (ss. 72.14 (1) (e), 72.14 (2) and 72.33, Stats.) (1) In computing the taxable estate for Wisconsin inheritance tax purposes, a deduction shall be allowed for the full federal estate tax as finally determined and paid.

(2) Whenever the federal estate tax paid is not final and conclusive, a deduction may be claimed for the amount of tax due as shown on the return as filed, providing that at least that amount has been paid. If the final federal estate tax paid increases or decreases, the adjustment in the federal estate tax deduction is made within 30 days of final determination by submitting the adjustments with proof to the Department of Revenue under s. 72.33, Stats. Any additional tax owing should accompany the adjustments. Any refund will be certified upon audit and issued. To expedite processing, the date the original "Certificate Deter-

mining Inheritance Tax" (HT-214) was issued should be included with the information.

History: Cr. Register, July, 1982, No. 319, eff. 8-1-82.

Tax 10.115 Federal estate tax deduction for deaths prior to July 1, 1979. (ss. 72.14 (1) (e) and 72.14 (2), Stats.) (1) In computing the taxable estate for Wisconsin inheritance tax purposes, a deduction shall be allowed for the full federal estate tax as finally determined and paid.

(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 pruposes. 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 considereing 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; renum. from Tax 10.11, Register, July, 1982, No. 319, eff. 8-1-82.

Tax 10.12 Deductibility of taxes. (s. 72.14 (1) Stats.) (1) Any Wisconsin or federal income, withholding, unemployment, sales or transfer taxes attributable to a period prior to the decedent's date of death and due by the decedent and unpaid as of the date of death, together with interest and penalties thereon to the date of death, shall be deductible from the decedent's estate for inheritance tax purposes as a debt.

(2) Any Wisconsin or federal income, withholding, unemployment, sales or transfer taxes attributable to a period beginning on or after the

date of death, together with interest and penalties thereon, or interest and penalties attributable to any taxes in sub. (1) from the date of death until paid, shall not be deductible from the decedent's estate for inheritance tax purposes. This section does not apply to the federal estate tax deduction under s. 72.14 (1) (e), Stats.

History: Cr. Register, March, 1978, No. 267, eff. 4-1-78; r. and recr. Register, July, 1982, No. 319, eff. 8-1-82.

Tax 10.13 Apportionment of property qualifying for exception. (s. 72.15 (4), Stats.) Each distributee of property qualifying for exception under s. 72.15 (4), Stats., shall report that portion of the total exception based on the ratio that the value of property qualifying for exception distributable to such distributee bears to the total value of the property qualifying for exception distributable to all distributees.

History: Cr. Register, July, 1982, No. 319, eff. 8-1-82.