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THE NEW WISCONSIN INHERITANCE, ESTATE AND GIFT TAX LAW

THOMAS M. BOYKOFF*

INTRODUCTION

Wis. Laws 1971, ch. 310 represents the most comprehensive revision of Wisconsin's inheritance, estate and gift tax statutes since their enactment in 1903, 1931 and 1933, respectively.¹ An understanding of the changes in tax law effected by this legislative enactment is important to the practicing attorney in both his probate practice and estate planning. In addition, an understanding of some topics not fully dealt with in the revision will alert members of the Bar and of the Legislature to problems which may arise for the practitioner and the state. Some of these problems may give rise to conflicting interpretations of the law until they are resolved by either a court decision or clarifying legislation.

I. BACKGROUND AND DEVELOPMENT OF THE BILL WHICH BECAME WIS. LAWS 1971, CH. 310

A. *Development and History of the Bill*

During the 1969 legislative session and immediately preceding sessions, many proposals were introduced in each house of the Legislature suggesting changes to the inheritance, estate and gift taxes. A general type of proposals which predominated were bills which would have increased the amounts or types of transfers which were exempt from tax.

On February 26, 1969, at the request of James R. Morgan, then Secretary of the Department of Revenue, the Joint Committee on Finance introduced 1969 Senate Joint Resolution 30.² The Joint

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1. The first valid state inheritance tax was enacted as Wis. Laws 1903, ch. 44. The first state estate and gift taxes were enacted as Wis. Laws 1931, ch. 426 and Wis. Laws 1933, ch. 363, § 4.

2. 1969 Senate Joint Resolution 30 read as follows:

Resolution stated that there had never been a study of the administration and burden of Wisconsin's inheritance tax and noted that this state tax may be causing persons to leave the state to avoid it. The proposal directed the Legislative Council³ to study the administration and burden of Wisconsin's "inheritance taxes" (presumably this included both the inheritance and estate taxes) and the effect, if any, the inheritance tax had on persons leaving the state. The Legislative Council was directed to make recommendations to the 1971 session of the Legislature on any changes which should be made in the law.

Although 1969 Senate Joint Resolution 30 was not adopted by the Legislature, the Legislative Council felt that the problems it raised merited detailed consideration. At its May 22, 1971 meeting, the Council unanimously agreed to authorize a study of not only the state's inheritance tax laws, but also the state's gift tax laws.⁴

Whereas, the Wisconsin inheritance tax was adopted in 1903; and

Whereas, the 30% surtax was adopted in 1937 as an emergency measure and has never been repealed; and

Whereas, there has never been a study of the administration and burden of the Wisconsin inheritance tax compared to similar taxes in other states; and

Whereas, a recent study by the Advisory Commission on Intergovernmental Relations showed that Wisconsin generally ranks second highest among the states in the amount of inheritance taxes paid by various size estates; and

Whereas, there have been cases where Wisconsin residents have left the state to avoid the payment of Wisconsin inheritance taxes; and

Whereas, Wisconsin loses not only the inheritance tax revenue and the income tax revenue from these former residents but in some cases a family-owned business is relocated; now, therefore, be it

Resolved by the Senate, the assembly concurring, That the legislative council is directed to study the administration and burden of Wisconsin inheritance taxes compared to other states, and the effect, if any, the inheritance tax has on persons leaving the state, and make recommendations to the 1971 legislature as to any changes which should be made in the law as to administration and taxation.

3. The legislative Council is a statutory body of 19 members, composed of legislative leaders of both major parties in each house. One of the Council's duties is to direct research for the Legislature on important state problems and to formulate recommendations for legislation. *See* WIS. STAT. §§ 13.81, 13.82, 13.83, 13.84 and 13.91 (1971).

Major revisions of state law have been undertaken by study committees appointed by the Legislative Council. Council proposals have had a relatively high degree of success in the Legislature.

See Wisconsin Legislative Council Staff, Legislative Council and Legislative Council Staff Past and Present (Report No. 1 to Special Review Committee of Legislative Council) at 8-11 (July 19, 1971).

4. Legislative Council, Minutes of May 22, 1969 meeting at 3 [hereinafter cited as Legislative Council Minutes]. A review of this subject matter was especially timely. At its November 18, 1968 meeting, the Legislative Council recommended introduction to the Legislature of a proposal which was subsequently enacted as Wis. Laws 1969, ch. 339, Wisconsin's "Probate Code".

At its December 8, 1969 meeting, the Legislative Council established the "Advisory Committee on Inheritance and Gift Tax" (hereinafter Advisory Committee) and appointed twelve members to the Advisory Committee. Four Legislators were appointed: two members of the Senate's standing Committee on Labor, Taxation, Insurance and Banking (Senators Myron P. Lotto and Joseph Lourigan) and two members of the Assembly's standing Committee on Taxation (Representatives Robert O. Uehling and Harvey L. Dueholm). In addition, eight public members were selected, on the basis of their knowledge of and experience with the subject matter.⁵

An additional public member was subsequently appointed⁶ and the 13-member Advisory Committee then consisted of four legislators and nine public members. Among the Advisory Committee's members were nine attorneys (including a probate judge and a former probate judge) and one representative of the insurance industry. The nine public members were: Gerald A. Goldberg, Milwaukee; Hugh F. Gwin, Hudson; George Kroncke, Jr., Madison; Robert C. Lovejoy, Janesville; Arthur F. Lubke, Jr., Milwaukee; Edward C. Schroder, Appleton; James Vance, Fort Atkinson; Hon. J. W. Wilkus, Sheboygan; and Richard E. Williams, Madison.

The Advisory Committee held its organizational meeting on December 30, 1969. It held a total of 17 meetings, all in Madison. At its last meeting, on April 16, 1971, the Advisory Committee voted unanimously to recommend to the Legislative Council for introduction two bill drafts, LRB-639/5 and LRB-1563/2. At the Legislative Council's April 28, 1971 meeting, the Council accepted the Advisory Committee's recommendations and approved their introduction in the Legislature.⁷ (Technical, stenographic-clerical types of corrections to LRB-639/5 required two additional drafts, and LRB-639/7 was ultimately introduced.) These proposals were introduced in the Senate on May 4, 1971 as 1971 Senate Bills 471 and 472.

The major portion of 1971 Senate Bill 471 proposed the repeal and recreation of WIS. STAT. ch. 72 (1969) and WIS. STAT. § 253.25 (1969), relating to inheritance, estate and gift taxes and the public administrator. During the course of the Senate's consideration of the bill, five amendments were proposed, among

5. Legislative Council Minutes, December 8, 1969 at 7-8.

6. Legislative Council Minutes, March 16, 1970 at 17.

7. Legislative Council Minutes, April 28, 1971 at 11-17.

which three were adopted. In the Assembly, two amendments were proposed and both were rejected. On May 10, 1972 the bill was signed by the Governor. The bill was published on May 13, 1972 and took effect the following day as Wis. Laws 1971, ch. 310.⁸

The Advisory Committee's second proposal, 1971 Senate Bill 472, proposed amending WIS. STAT. §§ 858.13 and 858.15 (1969), relating to appraisers and the appraisal of probate assets. The Senate passed the bill, as amended, and the bill was also amended in the Assembly. However, the proposal ultimately failed, as it was not acted upon when the 1971 legislative session adjourned.⁹

B. Written Materials Which Chronicle the Progress of the Advisory Committee on Inheritance and Gift Tax

During the course of the study, the Legislative Council Staff provided the Advisory Committee with three types of written materials. These materials may assist the researcher or practitioner wanting to obtain background information relating to one or more aspects of the study or wanting to prove (or disprove) legislative intent. The written materials are (1) Minutes; (2) Bill Drafts; and (3) Other materials, including memoranda either prepared by the staff on legal problems or fiscal information, or provided by interested persons for the Advisory Committee's consideration. All three types of materials are on file in the office of the Legislative Council Staff, Room 147 North, State Capitol, Madison.

1. Minutes

A stenographer transcribed in shorthand the highlights of each committee meeting with some detail. The staff attorney assigned to the Advisory Committee then reviewed the transcript for clarity and accuracy. Each transcript was mailed to Advisory Committee members as soon as possible after the meeting. Prior to the subsequent meeting, members had the opportunity of reviewing the Minutes and of correcting or clarifying any item of concern. Members were not reluctant to exercise this privilege.¹⁰

The Minutes range in length from seven single spaced, typed

8. For a summary of the progress of the bill through the Legislature, see *Bulletin of the Proceedings of the Wisconsin Legislature, 1971 Session, Senate, Period Ending July 22, 1972* at 324-325 [hereinafter cited as *1971 Bulletin of Proceedings, Senate*].

9. For a summary of the progress of the bill through the Legislature, see *1971 Bulletin of Proceedings, Senate* at 325-326.

10. See, e.g., Advisory Committee on Inheritance and Gift Tax, Minutes of October 2, 1970 at 2, which reflect that the Advisory Committee adopted three changes to the Minutes of the prior meeting [hereinafter cited as *Advisory Committee Minutes*].

pages (the December 30, 1960 meeting) to 42 pages (the February 12, 1971 meeting). They reflect the differing attitudes and concerns of individual committee members and the alternatives which were considered prior to reaching committee decisions. The Minutes reflect two types of committee decisions: the development of broad policy changes in the inheritance tax law (such as the role of the public administrator in inheritance tax determination and the method of taxation of jointly owned property); and concern for the precise wording of narrower problems (for example, the changes in the concept of the inheritance tax credit and in the language describing class A donees for gift tax purposes).

2. Bill Drafts

The bill which was ultimately introduced in the Legislature was the seventh in a series of numbered drafts. In addition, however, several unnumbered drafts were prepared for the Advisory Committee's review. These unnumbered drafts dealt mostly with narrow problems and were intended to give the Advisory Committee working documents to help it achieve early consensus on some items.

The seven numbered drafts were prepared by the Legislative Reference Bureau's draftsmen at the direction of the Legislative Council Staff. The drafts, like the Minutes of committee meetings, reflect the development of the advisory Committee's agreement on both broad policy matters and on narrower details of tax determination. (Copies of the numbered drafts are on file in the office of the Legislative Council Staff and are among the permanent drafting records of the Legislative Reference Bureau, Room 201 North, State Capitol, Madison.)

3. Other Materials

Other materials which were provided to the Advisory Committee are attached to the Legislative Council's file copy of each set of Minutes. These materials include memoranda prepared by the Legislative Council Staff containing legal information and fiscal data. Examples include: (a) a five page memorandum, dated August 20, 1970, entitled "Statistical Survey of Estates Closed in Calendar Year 1968", with 22 attached tables summarizing the significant aspects of the statistical survey described in the memorandum, (attached to the file copy of the Minutes of the Advisory Committee's August 28, 1970 meeting); and (b) a three page memorandum, dated September 29, 1970, entitled "The 'Stepchild' and the Inheritance Tax Law" (attached to the file copy of the Minutes of the Advisory Committee's October 2, 1972 meeting).

Materials were provided for the consideration of the Advisory Committee, by interested persons, including both committee members and nonmembers. At the Advisory Committee's February 27, 1970 meeting, for example, Committee Member Arthur Lubke described the results of an informal survey which he conducted in which he questioned several Milwaukee County attorneys about their clients who had moved from Wisconsin since January 1, 1966 for other than business reasons (discussed below). As another example, at the Advisory Committee's October 2, 1970 meeting, James R. Morgan, then Secretary of the Department of Revenue, presented a departmental position paper entitled "Proposed Changes in the Administration of the Inheritance Tax."

Extensive oral reports, often with accompanying written materials, on special problem areas were presented at meetings of the Advisory Committee. At the March 20, 1970 meeting, for example, Mr. Donald E. Kunde, Chief Auditor, Fiduciary and Gift Tax Section, Department of Revenue, presented information on administrative and enforcement aspects of the gift tax. At the June 26, 1970 meeting, the Advisory Committee heard Attorney Neil M. Conway, Wausau, chairman of a Subcommittee on the Taxation of Joint Tenancy Property of an Advisory Committee to the Secretary of the Department of Revenue, discuss the recommendations of that group. At that meeting, Harold V. Froelich of Appleton, then Assembly Speaker and Chairman of the Legislative Council, also addressed the Advisory Committee on problems involved in the taxation of joint tenancy property.

Each meeting of the Advisory Committee was attended by one or more representatives of the Department of Revenue. The meetings were attended, at various times, by James R. Morgan, formerly Secretary of the Department; Mr. Kunde; Patrick Lyons, Director, Bureau of Inheritance Tax; Leo Mack, formerly Inheritance Tax Counsel; Neal E. Schmidt, staff attorney, Bureau of Inheritance Tax; and Glenn L. Holmes, formerly administrator, Property and Special Taxes Division.

C. Fiscal Information Available to the Advisory Committee, the Legislature and the Governor

One factor motivating the creation of the Advisory Committee by the Legislative Council was the Council's concern that Wisconsin's inheritance tax may be causing residents to leave the state. The Minutes of several Advisory Committee meetings reflect its awareness that, to have any chance of passage in the Legislature, the Committee's recommendations must remove this negative impression of the inheritance, estate and gift taxes.

The Advisory Committee also recognized that its recommendations must not result in any significant reduction of state tax collections. The Advisory Committee's sensitivity to the fiscal impact of its recommendations was reflected in its concern with two types of statistical information. The first type consisted of some informal data gathered by Public Member Arthur F. Lubke, Jr.¹¹ Early in the study, Mr. Lubke informally polled members of the Milwaukee Bar Association's Inheritance Tax Committee asking if these attorneys had clients who left the state because of Wisconsin's inheritance tax. Answers from eight attorneys indicated that at least 35 clients, with combined estates in excess of \$13 million, had left the state. The consensus of the replies was that avoidance of Wisconsin's tax environment was a dominant motive in the moves and that death taxes were a more significant factor than the state income tax.

This survey indicated that persons who left frequently moved to Florida, where the state's death tax does not increase the total amount of a decedent's death taxes and where there is no income tax. Additionally, several Milwaukee attorneys admitted that they were counseling clients, as a necessary step in effective estate tax planning, to change their legal residence to Florida.¹² Several attorneys said that they had set up checklists, itemizing what their clients could (or should) do in Wisconsin without being considered legal residents.

A second type of fiscal information was available to the Advisory Committee. The Legislative Council Staff supervised a computerized statistical analysis of all estates closed during the calendar year 1968 and prepared data based on the analysis for the Advisory Committee's review.¹³

The statistical analysis reflected that, during calendar year 1968, about 16,000 estates were closed for which an inheritance tax determination was made. Among these, 84% of the estates had

11. For a further discussion of this survey, see Advisory Committee Minutes, February 27, 1970 at 3. A copy of Mr. Lubke's questionnaire is attached to the file copy of these Minutes.

12. Advising clients to change their legal residence appears to be an accepted tool of estate planning in New York, another state with high death taxes. See Cannon, *Income, Property and Inheritance Tax Effect of Changing Domicile From New York City to Florida*, 43 N.Y. BAR J. 130 (1971).

13. The methodology, limitations and results of this statistical analysis are summarized in a memorandum to the Advisory Committee, entitled "Statistical Survey of Estates Closed in Calendar Year 1968", dated August 20, 1970, attached to which are tables setting out data derived from the analysis. These materials are attached to the file copy of the Advisory Committee Minutes, August 28, 1970.

taxable assets under \$50,000 while the remaining 16% of the estates had more than \$50,000 of taxable assets. Interestingly, the larger estates—the 16%—were distributed among 24.88% of all reported beneficiaries, accounted for 57.70% of all assets transferred because of death and paid 76.99% of all inheritance tax for that calendar year. (See Table 1)¹⁴

After its introduction in the Senate, Senate Bill 471 was referred to the Joint Survey Committee on Tax Exemptions. This Committee, created by Wis. Stat. Sec. 13.52 (1971), is directed by statute to review “any proposal which affects any existing statute or creates any new statute relating to the exemption of any property or person from any state or local taxes . . .”¹⁵ The Joint Survey Committee must submit a report to the Legislature on each such proposal, containing the following information: (1) a summary of the general nature of the proposal; (2) an opinion on its legality; (3) an opinion on its fiscal effect upon the state and its subdivisions; and (4) an opinion on the proposal’s desirability as a matter of public policy.

As required by statute, the Joint Survey Committee on Tax Exemptions held a hearing on Senate Bill 471 to elicit information necessary to make its report. The hearing was held on May 18, 1971¹⁶ and, at its June 15, 1971 meeting, the Committee unanimously adopted a favorable Report.¹⁷ On the bill’s fiscal effect, the Report stated:

It is estimated that this proposal would increase state general purpose costs \$39,000 in fiscal 1972 and \$70,000 in fiscal 1973 for a biennial total of \$109,000. Fiscal 1973 is indicative of the annual long range fiscal effect of the proposal.

The net fiscal effect of the proposal on general purpose revenue is expected to be approximately identical to the yield of the present inheritance, estate and gift taxes. In fiscal 1972-73 the net effect should be an increase of approximately \$100,000 in general

14. This data is contained in the tables discussed in note 13, *supra*. The distribution of estates among beneficiaries and the relative portion of death taxes paid by the beneficiaries is similar to the results of similar surveys covering approximately the same time periods which were prepared in California and Delaware. See *State Controller, Inheritance and Gift Tax Division, Statistics of California State Inheritance Tax, Fiscal Year Ending June 30, 1967 and Fiscal Year Ending June 30, 1968* (January 1970) and *Brams, Delaware Inheritance and Estate Taxes* (April 1969).

15. WIS. STAT. § 13.52(6) (1971).

16. Joint Survey Committee on Tax Exemptions, Minutes of May 18, 1971 meeting at 4 [hereinafter cited as Joint Survey Committee Minutes].

17. Joint Survey Committee Minutes, June 15, 1971 at 6.

purpose revenue and in fiscal 1973-74 and thereafter an increase of about \$200,000.¹⁸

The Report of the Joint Survey Committee concluded that the bill was desirable as a matter of public policy. Among the reasons specified was that it would result in an incalculable, yet significant, fiscal benefit to counties. On this point, the Report stated that, in the bill, "procedures of tax determination are simplified and court participation in inheritance tax determination is no longer required except in instances of dispute. These changes will result in time savings to the county court and its personnel."¹⁹

On April 23, 1972, after the Asembly had concurred in Senate Bill 471 but prior to the Governor's signing it into law, the *Milwaukee Journal* printed the results of a study of tax considerations which encourage persons to leave the state. The study was based on 160 responses to questionnaires submitted to lawyers, banks, estate and trust officers and others involved in estate and tax work. One of the study's conclusions was that the state's inheritance taxes have an impact on a broad spectrum of state residents, not just the wealthy. Interestingly, many of the complaints regarding Wisconsin's inheritance, estate and gift taxes which were listed in the *Journal* study were treated in and resolved by 1971 Senate Bill 471.

II. EXPLANATION OF THE NEW INHERITANCE, ESTATE AND GIFT TAX LAW

Introduction

Wis. Laws 1971, ch. 310 repealed and recreated Wis. STAT. ch. 72, the state's inheritance, estate and gift tax laws. This new law was published on May 13, 1972 and, by its own terms, applies to all transfers because of a death or gift on or after May 14, 1972. The old law, Wis. STAT. ch. 72 (1969), continues to apply to all transfers because of a death or gift prior to May 14, 1972.²¹

18. *Report of the Joint Survey Committee on Tax Exemptions*, printed as an Appendix to Senate Bill 471, at 3 [hereinafter cited as *Report of Joint Survey Committee*].

This statement of the bill's fiscal effect superseded a "Fiscal Note" which had been issued several weeks earlier, signed by the Department of Revenue. The earlier fiscal note was identical to the Joint Survey Committee's statement except that it did not include the last sentence.

19. *Report of Joint Survey Committee* at 3.

20. Udell and Strang, *Taxation and Changes in Residency*, *Milwaukee Journal*, April 23, 1972, Accent Section, 6 (reprinted May 1972) [hereinafter cited as Udell and Strang (reprint)].

21. Throughout this article, a designation of the statutory provision discussed in the text will accompany the discussion and will be set off by brackets. For brevity, the old law, Wis.

The basic policy objective underlying the new law was to lessen the effect which the inheritance, estate and gift taxes may have had in causing persons to leave the state. The new law was aimed at achieving this in two ways. First, the new law tries to effect a fairer distribution of the tax burden. This is done principally by granting greater exemptions and other benefits to near relatives of decedents and donors and to estates under \$50,000.

Secondly, the new law permits greater simplicity and expediency in tax computation, determination and payment. Simplification of computation permits individuals to assess the impact of the laws on their circumstances more easily. Expediency in tax determination and payment permits most individuals to believe (whether or not the belief is true) that their estates will pass to their heirs more quickly, with a decrease of formality and "red tape."

A basic technical objective is discernible from a review of the Minutes of the Legislative Council's Advisory Committee on Inheritance and Gift Tax. This objective, translatable into legislative intent, is the desire to effect a greater coordination among the various components of WIS. STAT. ch. 72 (1971) and between WIS. STAT. ch. 72 (1971) and other laws, especially the Probate Code.

First, the new law achieves greater similarity among the non-administrative portions of the state inheritance and gift tax laws. Secondly, the new law effects a greater coordination between WIS. STAT. ch. 72 (1971) and the terminology and procedures of Wisconsin's Probate Code. Thirdly, the new law brings greater conformity between provisions of the state and federal gift tax laws.

In the new law, WIS. STAT. ch. 72 (1971) is divided into four separate subchapters, replacing the old law's awkward arrangement and numerical sequence. As a symbolic example of the difference between the two under the old law, WIS. STAT. ch. 72 (1969) is entitled "Inheritance Tax Act"; under the new law, WIS. STAT. ch. 72 (1971) is entitled "Inheritance, Estate and Gift Tax" to reflect the chapter's contents more accurately.

The new law will be discussed in this article in the same order as the new subchapters. This order is as follows:

- A. Subchapter I: General Provisions
- B. Subchapter II: Inheritance Tax
- C. Subchapter III: Estate Tax
- D. Subchapter IV: Gift Tax

STAT. ch. 72 (1969), will be referred to as "old Sec. ____" and the new law, WIS. STAT. ch. 72 (1971), will be referred to as "new Sec. ____".

A. Subchapter I: General Provisions

Subchapter I of the new law contains general provisions which are applicable throughout the chapter. The subchapter achieves consistency with the Probate Code by adopting, where possible, substantially similar terminology and other provisions (e.g., regarding notice [new sec. 72.03] and the status of adopted persons [new sec. 72.07]). In addition, the subchapter collects items which were set out more than once in the old law (e.g., the definitions of “mutually acknowledged child” [new sec. 72.01(15); old secs. 72.02(1) and 72.77(1)] and “power appointment” [new sec. 72.01(17); old secs. 72.01(5) and 72.75(3)].

1. Definitions

Subchapter I contains definitions of words and phrases which apply throughout Wis. STAT. ch. 72 (1971). Some definitions are either identical or similar to the definitions in Wis. STAT. ch. 851 (1971), the general provisions of the Probate Code. For example, the definitions of “personal representative” [new sec. 72.01(16)] and “probate court” [new sec. 72.01(18)] are new to Wis. STAT. ch. 72 (1971) and are identical with the definitions in Wis. STAT. Secs. 851.23 (except for one comma) and 851.25, respectively. In addition, the definitions of “administration” [new sec. 72.01(1)] and “distributee” [new sec. 72.01(9)] are also new to Wis. STAT. ch. 72 (1971) and are very similar to the definitions in Wis. STAT. §§ 851.01 and 851.07, respectively.

Several additional definitions are new to Wis. STAT. ch. 72 (1971) and are included among the definitions primarily as a shorthand way of designating a particular meaning to a word instead of necessitating frequent use of a longer phrase. For example, defining “municipality” [new sec. 72.01(14)] avoids the necessity of enumerating the various types of municipalities at several places in the new law [see, for example, secs. 72.15(1)(a) 1 and 6].

Practitioners should carefully examine such drafting tools, however, to see if they result in any substantive change in the law. Following through with the above example, the new law exempts from the inheritance tax the transfer of certain death benefits which are payable under “any employee benefit program of . . . [a] Wisconsin municipality” [new sec. 72.12(4)(c) 2a]. The new definition of “municipality” results in an increase in the types of exempt transfers, in contrast to the old statutory language which enumerated five specific types of employee benefit programs [old sec. 72.04(6)]. The result is that certain transfers are exempt under

the new law which were not exempt under the restrictive language of the old law.²²

Two additional definitions contain salient departures from the old inheritance and gift tax law. First, the definition of "mutually acknowledged child" [old sec.s 72.02(1) and 72.77(1); new sec. 72.01(15)] is broadened. This may be important for estates of decedents who leave property to stepchildren, foster children or children taken into the home without formal adoption or guardianship proceedings. The new law changes the age of the child at which the relationship must have commenced from 15 years to 16 years. In addition, the required duration of the relationship is reduced from a minimum of 10 years to a minimum of five years *or* a shorter period if the shorter period immediately preceded decedent's death. Hypothetically, the duration of the relationship may be as short as one day (or less).²³ A substantial difference in tax may result from a person's being a mutually acknowledged child (a class A distributee) rather than a stranger (a class D distributee) which may someday result in litigation.

The second definition which contains a striking departure from the old inheritance and gift tax law is the definition of "power of appointment" [new sec. 72.01 (17); old secs. 72.01(5) and 72.75(3)]. Many practitioners have voiced dissatisfaction that the state did not adopt the same approach to the topics of powers of appointment as the Internal Revenue Code.²⁴ This could not be done, however, because of the conceptual distinction between the state inheritance tax (a tax on transfers, imposed on different types of distributees at different rates) and the federal estate tax (a tax on the value of the estate, not taking into account to whom it passes, except, of course, for the marital deduction).

22. The Advisory Committee intended this result. See Advisory Committee Minutes, February 12, 1971 at 30-31. The note following Wis. STAT. § 72.12 (1971) in Wis. Laws 1971, ch. 310 says that this codifies "what has been administrative practice."

Notes are printed after most sections of the new law in both Wis. Laws 1971, ch. 310 and Wis. Stat. ch. 72 (1971) citing parallel statutory provisions in the old law and noting significant changes from the old law. These notes, which were initially printed as part of the bill, should prove useful in tracing the derivation of many provisions of the new law. (Notes from the original bill were not printed with the act nor in the 1971 statutes if the section to which the note related was amended by the Legislature.)

23. The Advisory Committee rejected the suggestion that a one year minimum time period be established to prevent situations of fraud or of persons trying to establish the relationship at the decedent's death bed. See Advisory Committee Minutes, October 30, 1970 at 8.

24. For a summary of the Advisory Committee's discussion of this problem, see Advisory Committee Minutes, December 18, 1970 at 16-17.

Under the new law, however, the same definition of "power of appointment" is adopted for both the inheritance and the gift tax. This results in an expansion of the enumerated "restricted" class of persons for inheritance tax purposes to include the widower of a daughter of the power's creator and to "distributees specified in sec. 72.15(1)" (certain charities). For gift tax purposes, the new law expands the "restricted" class even further.²⁵

2. Rules and Forms

The new law authorizes the Department of Revenue to make rules and to prescribe²⁶ forms required to compute, assess and collect the inheritance, estate and gift taxes. These powers are new to the Department in the area of inheritance tax. Under the old law, the Department only had this authority with regard to the state estate and gift tax [old secs. 72.57 and 72.81(1)].

The Department's new rule making authority must be exercised pursuant to Wis. STAT. ch. 227 (1971), the chapter regulating administrative procedures and review. In addition, practitioners should be aware that the rules so promulgated will be within the review jurisdiction of the Legislative Joint Committee for Review of Administrative Rules.²⁷

B. Subchapter II: Inheritance Tax

Subchapter II of Wis. STAT. ch. 72 (1971) contains the new inheritance tax laws which apply to all transfers because of a death which occurred on or after May 14, 1972. The new law contains comprehensive changes both in substantive (non-administrative) aspects of the inheritance tax and in the procedures of tax determination.

A preliminary determination of the Advisory Committee was to retain the inheritance tax instead of adopting an estate tax approach to the death tax.²⁸ The Advisory Committee premised this decision on its belief that the inheritance tax provides greater flexibility than the estate tax in distributing the tax burden. Under

25. Compare Wis. STAT. § 72.75(3) (1969) with Wis. STAT. § 72.01(17) (1971).

26. Several early bill drafts of the Advisory Committee required the Department of Revenue to "prepare and provide all" necessary forms. For example, see LRB-639/3, page 5, line 5 and LRB-639/4, page 5, line 11. This requirement was deleted from the final draft at the Department's request. Advisory Committee Minutes, April 16, 1971 at 6-7.

27. See Wis. STAT. § 13.56 (1971).

28. Advisory Committee Minutes, January 23, 1970 at 3-4, and February 27, 1970 at 2-3 and 5-6, and August 28, 1970 at 2-6. See also Legislative Council Minutes, April 28, 1971 at 14.

the inheritance tax approach, by classifying distributees according to their degree of relationship to the decedent, more favorable treatment in exemptions and rates may be given to closer relatives than to more distant relatives, and more favorable treatment may be given to distant relatives than to non-relatives. Another advantage in the inheritance tax approach is that any revenue loss resulting from granting more favorable exemptions or rates to one class of distributees may be made up by decreasing exemptions or increasing rates for another class.

The first portion of this subheading reviews the most significant changes made by Wis. Laws 1971, ch. 310 to substantive (non-administrative) aspects of inheritance tax. This excludes the new method of inheritance tax determination, which is separately discussed under the second portion of this subheading. The last portion will separately review the often criticized, but nevertheless central, role of the public administrator in inheritance tax determination.

1. Substantive (Non-administrative) Changes

Subjects liable. The section of the new law [sec. 72.11] which describes subjects liable to the inheritance tax is a restatement of the old law [secs. 72.01(1), (2) and (9)]. Briefly, the inheritance tax is imposed upon the transfer of any property not exempt under new Sec. 72.15(2) to any distributee if the decedent was a Wisconsin resident at the time of death *or* if the decedent was a nonresident but the property was "within the jurisdiction of this state" [new sec. 72.11 (1)(b)].²⁹

The intent of the new statute's reciprocity provision [sec. 72.11 (2)] is to exempt from the inheritance tax a nonresident decedent's intangible personal property having an actual situs in this state, if the state of the decedent's residence has a like exemption. (All states except Nevada, which has no death tax, fall within this exemption.) Examples of such intangible personal property are

29. Such property includes all real and tangible personal property physically within the state at the time of a nonresident decedent's death. See Advisory Committee Minutes, October 30, 1970 at 9-10.

The Advisory Committee was uncertain as to whether the words "the jurisdiction of" added anything to the phrase "within the jurisdiction of this state." After considerable discussion, however, it decided not to recommend deletion of the words in Wis. STAT. §§ 72.11(1)(b), 72.15(2), 72.75(1)(b) and 72.76(1)(b) (1971). At worst, the Advisory Committee felt, the words would be harmless surplusage. See Advisory Committee Minutes, November 25, 1970 at 7, December 18, 1970 at 14 and March 26, 1971 at 7.

stock certificates and bank books evidencing a savings account in an out-of-state savings institution.³⁰

Transfers liable. The section of the new law [sec. 72.12] which describes the transfers liable to the inheritance tax is largely a restatement of the old law [secs. 72.01 (1) to (7)] and a codification of what had been administrative practice. Provisions restating old law include those relating to property transferred by will and under the intestate laws of the state [new secs. 72.12(1) and (2); old secs. 72.01(1) and (2)], transfers in contemplation of death [new sec. 72.12 (4)(a); old sec. 72.01 (3)(a)] and transfers of court-ordered family allowances³¹ to a decedent's surviving spouse and family [new sec. 72.12(3); old sec. 72.24(5)]. A practice of the Department of Revenue relating to a "5 and 5" type of power of appointment was codified in new sec. 72.12(5)(c).³²

However, this section of the new law also includes two provisions which contain significant departures from the old law. These major changes are individually discussed below.

Transfers liable: survivorship interests. Among the most notable changes in the inheritance tax made by the new law is the new method of taxing the transfer of survivorship interests in jointly owned property. Under the old law, at the death of one of two joint tenants, only one-half of the property which passed to the survivor was taxed, even though the property may have been (and in most cases was) acquired as a result of unequal financial contribution [old sec. 72.01 (6)].³³ While the theory and language of the old statute appeared to permit an exemption for a fraction of jointly owned property, the Department of Revenue has taken the position in some instances that the so-called "tax-free half" was a taxable transfer as a "gift to take effect at death" [old sec. 72.01(3)(b)].³⁴

The new law adopts the federal method of valuing a transfer of property owned by two or more persons with the right of survi-

30. See Wis. STAT. § 72.01(9) (1969) and Advisory Committee Minutes, October 30, 1970 at 9-10. While the reciprocity provision was imprecisely drafted in 1971 Senate Bill 471, it was corrected by Wis. Laws 1971, ch. 307, § 41 so that Wis. STAT. § 72.11(2) (1971) is an accurate restatement of Wis. STAT. § 72.01(9) (1969). (See the note following § 41 of 1972 Special Session Assembly Bill 3, which was enacted as Wis. Laws 1971, ch. 307).

31. See Advisory Committee Minutes, December 18, 1970 at 15.

32. See Advisory Committee Minutes, April 16, 1971 at 8-10.

33. The number of two joint tenants has been selected as an example because two is the most common number of persons to own joint tenancy property. If there are more than two joint tenants, each surviving joint tenant, on the death of one of them, would continue to have an equal interest in the entire property.

34. See Advisory Committee Minutes, June 26, 1970 at 9.

vorship [sec. 72.12(6)].³⁵ Under this method, at the death of one of two persons owning property with the right of survivorship, the full clear market value of the entire property is taxed, less any portion which was either contributed by or originally belonged to the survivor.

The new method of taxing jointly owned property remedies two inequities resulting from the old law. Under the old law, a non-contributing, surviving spouse joint tenant received a tax benefit which he or she would not have received had the same property been inherited after being solely owned by the decedent. This will not now occur because the new statute does not distinguish between transfers on the basis of what has been called "the accident of ownership." Additionally, the new law benefits the sole-contributing, surviving joint tenant who, under the old law, was taxed on the transfer of one-half the value of an asset which he or she originally wholly owned or alone acquired.

The new law, however, does not specify how surviving joint tenants may prove contribution to jointly owned property. This is one area which we can expect the Department of Revenue to clarify with its new administrative rule making powers. Meanwhile, surviving joint tenants should be prepared to show both proof of payment toward acquisition of the assets (for example, with cancelled checks or money order receipts) and evidence of the contributor's source of funds.

Information which may help prove a contributor's source of funds includes Wisconsin state income tax returns, social security records and evidence of a gift from a third person, bequest or lump sum payment in settlement of a law suit to one joint tenant.³⁶ Gift

35. The comparable federal law is INT. REV. CODE OF 1954, § 2040.

This decision was one of the two most difficult for the Advisory Committee. The second was the role of the public administrator in inheritance tax determination.

Alternatives which the Advisory Committee considered included retaining the old method for all jointly owned property; retaining the old method for only jointly owned property for which the signature of all joint tenants is necessary to transfer but adopt the federal method for all other types of jointly owned property; retain the old method for jointly owned property of spouses but adopt the federal method for jointly owned property of other persons; and exempt from the inheritance tax the transfer of all jointly owned property of spouses. *See, e.g.*, Advisory Committee Minutes, January 23, 1970 at 4-6; March 20, 1970 at 12-14; June 26, 1970 at 3-14; July 24, 1970 at 5-9; and August 28, 1970 at 10-11.

36. Advisory Committee Minutes, August 28, 1970 at 10-11. Evidence of this nature was also listed as acceptable in a three-page letter from the Department of Revenue, Bureau of Inheritance Taxation to all public administrators, dated November 9, 1972, at 2. When joint tenants have a problem proving contribution, the following observation made in that letter (page 3) may be useful:

tax returns, however, evidencing gifts by the decedent joint tenant to the survivor of a part interest in joint tenancy property or of funds with which the joint tenancy was acquired will probably not, under the new law as under the old law, be accepted as proof of contribution by the survivor.

Tracing of contribution should not be cumbersome in estates valued under \$50,000. In larger estates, with the new \$50,000 interspousal exemption and continuing \$10,000 insurance exemption, tracing should not impose any greater burden than otherwise might be required by the filing of a federal estate tax return which is likely to be involved.

The new method of taxing jointly owned property should not discourage this type of ownership where the intent of the joint tenants is to provide for the transfer of property when the first one dies. Many estates will not lose any tax advantage which they may have had under the old law by continuing such ownership, primarily because of the increases in exemption, especially in the interspousal exemption.³⁷

Transfers liable: insurance. Under both the old and new laws, in addition to all other exemptions permitted, the first \$10,000 of life insurance payable to a distributee is exempt from the inheritance tax [old sec. 72.01(7); new sec. 72.12(7)]. If life insurance is payable to more than one distributee, each distributee is entitled to a portion of the total exemption which is based on the ratio that the value of the insurance payable to him bears to the value of the total insurance payable to all distributees [new sec. 72.12(7)(b)]. Amounts of insurance in excess of the exemption are added to the value of other property received by the distributee by virtue of decedent's death.

Two important points in the new law regarding the insurance exemption should be noted. First, life insurance on the life of the deceased does not qualify for the exemption if it is paid, in whole or partial satisfaction of a lien on decedent's property, directly to a creditor. These amounts do not reduce the total amount of the exemption permitted to other distributees because the creditors to

Where actual cash flow cannot be shown, the amount of contribution allowed should represent an apportionment of the total available funds of all joint tenants applied to the actual value increases during the period the equities were established.

37. For a discussion of alternative types of concurrent ownership of real property under present Wisconsin statutes, see Comment, *Concurrent Ownership: Joint Tenancy and Tenancy in Common Under Chapter 700*, 55 MARQ. L. REV. 321 (1972). Problems involving survivorship rights in joint bank accounts under the old Wisconsin inheritance tax law are reviewed in Comment, *Joint Bank Accounts in Wisconsin*, 53 MARQ. L. REV. 801 (1966).

whom they are paid are not considered distributees. [See new secs. 72.01(9) and 72.12 (7)(b), sentence 1.] When the net value of an asset subject to a lien assumed by the distributee is established under new sec. 72.13(1), however, such lien is reduced to the extent it is satisfied by insurance proceeds [new sec. 72.13(2)]. (Thus, the final value of the asset is determined after the insurance is paid.)

Secondly, several types of proceeds will for the first time be permitted to qualify as part of the \$10,000 life insurance exemption (not in addition thereto) if they are paid to the distributee and not to the estate of the decedent. These proceeds are described as follows: "a funded, lump sum death benefit payable under a plan established prior to decedent's death by his employer or labor organization or both, or an 'employee welfare benefit plan' or 'employee pension benefit plan' as defined in 29 U.S.C. § 302, as amended . . ." [new sec. 72.12 (7)(b)].

Deductions. Under the old law [sec. 72.015], deductions for expenditures were permitted to be charged against assets of an estate subject to probate if they were made by the personal representative. The new statute increases the types of permissible deductions, expands the class of persons who may claim the deductions and broadens the types of property from which the deductible expenditures may be made.

Under the new law, deductions will continue to be permitted for debts of the decedent to the extent not claimed for income tax purposes, but only to the extent that they are "allowed by the court" [new sec. 72.14(1)(a)]. This appears to mean that deductions will not be permitted for payment of unenforceable debts. Deductions will also continue to be permitted for reasonable funeral and burial expenses (including costs of cremation); for expenses of administration not claimed for income tax purposes; and for federal estate taxes paid [new sec.s 72.14(1)(b), (c) and (e)]. In addition, the new law specifically permits deductions for real estate taxes accrued during the year of decedent's death [new sec. 72.14(1)(d)].

The new law continues to permit deductions for expenditures made by a personal representative out of assets of the decedent in his possession. A new provision now permits deductions for expenditures "advanced or paid by a distributee of any assets in his possession" [new sec. 72.14(1) intro.].

A new provision also permits deductions by a distributee out of non-probate assets in his possession for all of the above types of payments except debts of a decedent (except that debts for last illness expenses will be permitted). Such deductions will be allowed

only if property in the possession of the personal representative or special administrator is not sufficient to pay them or if the distributee is obligated to pay the expenses [new sec. 71.15(2)].

Classification of distributees. Several changes in the inheritance tax made by the new law are found in the classification of distributees for purposes of granting exemptions and imposing tax rates. Four classes of distributees are established in the new law (and are called distributee classes A, B, C and D) [new sec. 72.16], in contrast to the three classes of distributees in the old law [old sec. 72.02]. In general, distributees are grouped together according to the degree of their relationship to the decedent.

Table 2 sets out the old inheritance tax law's classification of distributees, their exemptions and statutory tax rates. [See old secs. 72.02 and 72.03]. Table 3 sets out the same information but gives the "effective rates" of inheritance tax, *i.e.*, the rates computed by starting with the basic or other rates, adding the 30% surtax and deducting the 5% early payment discount. Table 4 illustrates the new inheritance tax law's classification of distributees, their exemptions and tax rates [new secs. 72.16, 72.17 and 72.18].

The new law produces two significant changes in the classification of distributees. First, a decedent's brothers and sisters and the decendants of those brothers and sisters are removed from the group of distributees on which tax was imposed under the old law at the lowest rates. Secondly, the class of distributees receiving the most favorable tax treatment (class A distributees) is expanded to include the widower of a decedent's daughter. Under prior law, such sons-in-law were regarded, for purposes of classification, in the least favored class, the same as strangers-in-blood.

Exemptions. Other significant changes in the new inheritance tax law are the changes in exemptions [new sec. 72.17]. Under both the old and new laws exemptions must be taken out of the first \$25,000 transferred (\$50,000 for surviving spouses).

Under the new law, exemptions for all distributees are at least doubled. The most dramatic increase occurs for surviving spouses, who now are each permitted to receive from the other up to \$50,000 tax-free. Under the old law, surviving wives were not taxed on the first \$15,000 they received from their husbands, while surviving husbands received only a \$5,000 exemption. This aspect of the new inheritance tax law parallels the Probate Code's equal treatment of surviving spouses.³⁸

38. See, *e.g.*, WIS. STAT. §§ 861.03, 861.31 and 861.33 (1971). The last changes in exemptions for surviving spouses were made by Wis. Laws 1933, ch. 233 (when surviving

During the Advisory Committee's deliberations, the increase in the inheritance tax exemptions was conceptually tied to the new method of taxing jointly owned property. Initially, the Advisory Committee intended equalizing the exemption for surviving spouses at \$25,000. However, when the federal method of taxing jointly owned property was adopted, abandoning the rule of taxing only $\frac{1}{2}$ the value of such transfers, the exemption was increased to \$50,000 for spouses.³⁹

The exemption for a decedent's other close relatives, such as children,⁴⁰ grandchildren, and parents was doubled. The largest percentage increase in exemptions occurred, however, not for widowers (as may be expected), but for the surviving husband of the decedent's deceased daughter; this exemption, increased from \$100 to \$4,000, represents a 3,900% rise. (See Tables 2 and 4 to compare the exemptions of other distributees.)

With the increase in the exemption to class D distributees from \$100 to \$500, fewer appraisals of token bequests of personal property will be necessary. Most such items will clearly fall under the \$500 exemption and will save the estate the expense and time of obtaining appraisals.

Several miscellaneous exemptions which appear to have generally received little attention in the past are retained. In addition to other exemptions, transfers of the following types are exempt from the inheritance tax: (1) for the care and maintenance of the burial lot of the deceased, \$500; (2) to the cemetery in which the deceased is buried (no particular use is specified by statute), \$500 and (3) for the performance of a religious purpose or service for or in behalf of either the decedent or any person named in his will, \$1,000 [old sec. 72.045(4); new sec. 72.17(4)]. These exemptions may prove useful in estate planning to avoid the "wasting" of a portion of a

husbands were first granted \$5,000 exemptions) and by Wis. Laws 1923, ch. 306 (when surviving widows' exemptions were decreased to \$15,000 from \$25,000).

39. For illustrations of how the concepts of exemptions and the taxation of joint property were intertwined, see Advisory Committee Minutes, March 20, 1970 at 12-14; June 26, 1970 at 3-13; and July 24, 1970 at 5-9.

The Advisory Committee formally recommended the \$50,000 interspousal exemption and the federal method of taxing joint property at its July 24, 1970 meeting. Advisory Committee Minutes, July 24, 1970 at 9.

The Minutes reflect that the Advisory Committee recognized that this \$50,000 exemption and the \$10,000 insurance exemption would be similar to the \$60,000 federal exemption permitted each estate. *Id.* at 9. This similarity was coincidental.

40. The Advisory Committee discussed the possibility of granting a larger exemption for minor children but took no formal action on the issue. Advisory Committee Minutes, August 28, 1970 at 4-5.

distributee's personal exemption of the assets are directed to be used in the manner prescribed.

Tax Rates. The changes in tax rates in the new law have greatly simplified tax computation. Under the old law, calculation of the tax in one tax bracket could have required up to three computations (involving primary or other rates, the "emergency tax" (surtax) and the early payment discount) [old secs. 72.02, 72.03, 72.06 and 72.74]. Under the new law, only one computation in each tax bracket is required [new sec. 72.18].

Except for one instance, the new rates are slightly below the old before-discount, effective rates and are only slightly higher than the after-discount, effective rates. The only distributees whose tax burden is significantly increased under the new rate structure are class B distributees, i.e., brothers and sisters of the decedent and their descendants, groups generally deemed more remote to a decedent both in blood and affection. One practical effect of this is that estates of unmarried persons may be more heavily taxed, as they are more likely than married persons to leave their estates to class B distributees.

Several additional statutory changes were necessitated by the simplification of rates. The maximum portion of a bequest which can be taken in payment of taxes has been adjusted from the former 15% to 20% [old secs. 72.035, 72.06 and 72.74; new sec. 72.19]. Additionally, the percentage of inheritance tax collections which counties retain has been adjusted from 7½% of the basic rates only (not including surtax but reduced by the 5% early payment discount) [old sec. 72.20] to 6% of the entire tax [new sec. 72.32(3)]. This takes into account the merger of the basic rates with the surtax and permits counties to receive substantially the same portion of the inheritance tax under both the old and new laws.⁴¹

The statutory statement of tax rates for distributee classes C and D in the new law [see new sec. 72.18(3) and (4) and Table 4 herein, setting out the rates] reflects that, once a certain dollar plateau is reached, the rates are not increased, despite the graduated nature of the state inheritance tax. This results from the statutory provision limiting the inheritance tax to 20% of the total of the value of any bequest to a distributee. Ending the ascending

41. The new law does not affect the holding in *Estate of Levalley*, 191 Wis. 356, 210 N.W. 941 (1926). The old formulas, however, are no longer applicable because the tax exemptions and rates have changed. New formulas have been developed and were printed in the July 17, 1972 issue of *Wisbar Newsletter* at 4 (a periodic publication of the State Bar of Wisconsin).

progressions of rates in the statutes will avoid the erroneous impression which the tax tables may have given persons regarding the actual tax rates. That is, as a practical matter, once a certain dollar amount is reached for class B, C and D distributees, inheritance tax will be imposed at the 20% maximum rate, not the higher statutory rate, because the higher rate will result in a tax exceeding 20% of the total bequest and would then have to be adjusted downward. These upper dollar amounts are \$676,000 for class B distributees, \$132,000 for class C distributees, and \$75,000 for class D distributees.

Inheritance tax credit. Both the old and new inheritance tax laws provide a tax reduction to children who inherit their parents' estates if both parents died within six years of each other. The benefit is determined according to a formula [old sec. 72.045(1); new sec. 72.20(2)], the result of which is that the tax credit received by a child or children is related to the amount of inheritance tax paid by the child's parent last to die.

The new law makes three changes in the concept of inheritance tax credit. First, the element of graduation is introduced [new sec. 72.20(3)] so that the amount of credit decreases as the number of years between the deaths of the spouses increases. Secondly, the class of persons who qualify for the credit is extended beyond decedents' children [old sec. 72.045(1)] to include any child of a deceased child who takes by representation [new sec. 72.20(6)]. Such grandchildren must inherit, in the language of the statute, "by representation", through their parents; grandchildren inheriting directly from their grandparents do not qualify for the credit.

The third change which the new law makes in the inheritance tax credit is in the credit formula with the substitution of the word "children's" for "child's" [old sec. 72.045(1); new sec. 72.20 (2)]. With this change, the maximum allowable inheritance tax credit will not be decreased merely because the number of persons who qualify for it increases. Under the old wording of the formula, when more than one child was entitled to the credit, the total credit may have been substantially less than if there were only one child.

When tax due; interest. Under both the old and new law, the inheritance tax is due and payable at the time of decedent's death [old sec. 72.06; new sec. 72.22(1)]. Anyone personally liable for the tax could, and still can, tender an estimate of the tax to the county treasurer before the actual tax is determined [old sec. 72.06; new sec. 72.22(2)].

Under the old law, if the tax was paid within one year of the decedent's death, a discount of 5% was allowed. In addition, if the

tax was paid within 18 months of decedent's death, no interest was charged. If the tax was paid later, interest was charged from the decedent's date of death at the rate of 10% of the tax per year or, if a bond was obtained to insure tax payment [under old sec. 72.09], at the rate of 6% per year.

Under the new law, if the inheritance tax is paid within one year of decedent's date of death, no interest is charged and no 5% discount is allowed. If the tax is paid after one year, interest is payable at the single rate of 8% of the tax per year, computed from the decedent's date of death [new sec. 72.23(1)]. The new law continues to permit the waiver of interest on any additional tax arising from the discovery of property which was omitted in the original tax determination *if* due diligence was exercised in the original marshaling of the assets [old sec. 72.065; new sec. 72.23(2)].

2. Administrative Changes in Inheritance Tax Determination

The new law has effected a sweeping revision in the administrative process of inheritance tax determination.⁴² The concept continuing to underly the administrative procedures in the new law is that inheritance tax determination and collection should remain at the county level. Toward the goal of greater administrative uniformity throughout the state, however, the new law centralized within the Department of Revenue greater rule making authority,⁴³ permitting it to exercise a high degree of control over all persons involved in the determination and collection of the tax.

The major change in the new administrative process is that court participation in all inheritance tax determinations is no longer required. Under the new procedure, provision is made for "self-assessment", whereby a tax return can be filled out by an

42. During its deliberation on this aspect of its recommendations, the Advisory Committee discussed the possibility of totally restructuring the tax determination process by eliminating the role of public administrators. It concluded, however, that while the public administrator system had deficiencies, no realistic, economical substitute could be devised at the time which would perform the same functions and deliver the same services. Advisory Committee Minutes, May 22, 1970 at 8-12; June 26, 1970 at 18-20; and October 2, 1970 at 7-18.

43. At the time of writing this article (December 1972), the Department of Revenue had not exercised this new rule making authority. Three documents, however, have been issued by the Department, all dated June 30, 1972, relating to the new procedures: (1) a two page document entitled "Procedures for Processing the Inheritance Tax Certificates"; (2) a two page document entitled "Procedures for Processing the 'Tax' Inheritance Tax Return"; and (3) a one page document entitled "Procedures for Processing the 'No Tax' Inheritance Tax Return".

estate's legal representative or by a distributee. Tax returns may be filed with the Department of Revenue in much the same way as income tax returns. The public administration in each county, however, must be sent a copy and is given the authority to settle no-tax cases quickly.

The Department of Revenue, it bears repeating, is authorized by the new law to "make rules . . . required to compute, assess and collect" the inheritance tax [new sec. 72.05]. Such rules must be promulgated pursuant to the administrative rule making procedures of WIS. STAT. ch. 227 (1971). This article is confined to a description of the broad procedures established by Wis. Laws 1971, ch. 310, the parameters of the rule making authority established by the Legislature.

Preparing the return. The inheritance tax determination process commences with the preparation of the tax return. One of the following persons must prepare the return: a personal representative, special administrator, trustee, distributee or other "person interested" [new sec. 72.30(1)].⁴⁴ The person is required to compute the tax, if any, and to enter the information on the return [new sec. 72.30(1)(a)].

Valuation of property. Property will continue to be valued at its clear market value on the date of the decedent's death less enforceable liens assumed by the distributee [old sec. 72.01(8); new sec. 72.13(1)]. Several standards for the valuation of particular types of assets which are scattered throughout the old law are restated and collected in a single section of the new law, WIS. STAT. § 72.28(1) (1971).

A new provision, however, applies to the valuation of "a homestead" (presumably, although not specified, the decedent's homestead) which consists of a single-family dwelling or a duplex [new sec. 72.28(1)(a)]. Appraisals may be dispensed with in these instances by looking to the full value of the homestead based on its assessment for real estate tax purposes. In no-tax cases, especially in transfers between spouses, this will save small estates appraisal fees. In instances of dispute, however, an appraisal may be requested by the Department, public administrator or any interested party.

Filing the return. The person preparing the return must also "file" it. Because the new law does not prescribe any formal details for filing nor require "service" of the return, this may be done

44. See WIS. STAT. § 851.21(1) (1971) for a list of "persons interested"

either in person or by mail. The original, however, must be filed with the Department of Revenue, a copy with the public administrator and, if there is a court proceeding, a copy with the county court [new sec. 72.30(1)(b)].

Notice to distributees. Not more than ten days after filing the tax return, the person who prepared and filed it is required to furnish each distributee with certain information regarding the filing of the return and the property received by the distributee. Each distributee must be sent either a copy of the tax return or a statement containing specific information. This statement will permit notifying a distributee of information relating only to his interest in the property transferred without disclosing the full contents of the return.

If a statement is furnished, it must contain the following information: the date on which the return was filed; a list of property received by the distributee; and the total tax on the transfer of these items [new sec. 72.30(2)]. The statute requires the statement to summarize the value of "each item" received by the distributee. This will permit the distributee to know the values established so that he may, if he wishes, question the valuation of an individual item.

No-tax cases: lien waivers and closing certificates. Under the new law, a public administrator may⁴⁵ issue lien waivers or closing certificates or both when a tax return indicates that no tax is due [new sec. 72.31(3)(a)]. There is no requirement of a court determination and, if no one contests the public administrator's determination, it is final and contestable six months after the date of the certificate [new sec. 72.30(4)]. If a public administrator believes that a tax is due, however, he cannot proceed under his authority in no-tax cases.

Tax cases: lien waivers and closing certificates. Under the new law, when an inheritance tax return indicates that a tax is due, lien waivers and closing certificates may be issued only by the Department of Revenue or an "authorized public administrator" [new secs. 72.25(1) and 72.30(3)(a)]. An "authorized public administrator" is a public administrator to whom the Department of Revenue has delegated the authority to issue either or both of these docu-

45. In stating that the public administrator "may" grant these documents, the statute does not provide for an instance of his refusal to act when it is clear that no tax is due. Because the statute is not mandatory (it does not say when a person "shall" act), it is questionable if an action in mandamus would be the appropriate remedy. *Cf.*, WIS. STAT. §§ 293.01-.07 (1971).

ments in tax cases. Such authority may not be delegated for any cases, however, in which the total value of property transferred by reason of a death or in contemplation of death exceeds \$50,000 [new sec. 72.31(3)(a)].⁴⁶

A lien waiver may release either the entire lien or only a portion of it. The Department of authorized public administrator may issue the waiver when satisfied that the collection of the tax will not be jeopardized. Unlike the \$2 fee charged under the old law [old sec. 72.05(1)], no fee is charged for the release form. Upon payment of the same fee as for the recording of a mortgage satisfaction, the release may be recorded with the register of deeds in the county in which the property is located [old sec. 72.05(1); new sec. 72.25(1)].

In a tax situation, upon receipt of an inheritance tax return, the Department or authorized public administrator will inspect the return. Either may accept the return as prepared and issue a closing certificate. The closing certificate must be dated and must show the amount of tax and any interest [new sec. 72.30(3)(c)]. The certificate's issuer must retain a copy of the certificate and send the original to the person who filed the return [new sec. 72.30(3)(d)]. Where there is a court proceeding, no final judgment may be entered until the original certificate and proof of payment is filed with the court [new sec. 72.30(3)(e)]. Where there is no court proceeding, the original tax certificate should presumably be retained by the person filing the return.

After examining the inheritance tax return, the Department or authorized public administrator may request further information of the preparer, such as regarding the valuation of an asset [new sec. 72.30 (3)(a)]. If the additional information is sufficient or helps resolve the issue, the Department or authorized public administrator may then issue a closing certificate. If the Department or au-

46. The Advisory Committee felt that this would permit the Department of Revenue considerable flexibility in dealing with individual public administrators. Advisory Committee Minutes, February 12, 1971 at 11-12.

Under the new law, the Department may authorize individual public administrators to act differently in different types of tax cases. For example, public administrator "A" may be authorized to issue lien waivers and closing certificates in tax cases where the value of property is up to \$10,000, while public administrator "B" may be authorized to so act in tax cases where the value of property is up to \$40,000, and while public administrator "C" may be authorized to issue only lien waivers in tax cases where the value of property is up to \$50,000.

The Department has indicated that it will not delegate any such authority until it can fully assess the new tax determination procedures. Letter from the Department of Revenue, Bureau of Inheritance Taxation to all public administrators, dated November 9, 1972 at 2.

thorized public administrator and the prepare of the tax return are unable to reach initial agreement on a matter involving the proper amount of inheritance tax, two methods of resolving the dispute are available: (a) composition agreements; and (b) resort to the county court.

A composition agreement may be entered into, under both the old and new laws, when the dispute is one of several types enumerated by statute [old sec. 72.21; new sec. 72.28(2)]. In general, these types of disputes involve the valuation of remainders, expectant estates, powers of appointment, an interest of a distributee or trust beneficiary not ascertainable under the inheritance tax law and property of a nonresident decedent. When the amount of inheritance tax collectible exceeds or probably exceeds \$1,000, a composition agreement may be entered only after the Department or its inheritance tax counsel conducts an investigation and makes a report. If the inheritance tax counsel conducts the investigation, the Department must consent to the composition agreement [new sec. 72.34(5)].

When disputes arise over issues other than those enumerated by statute, it is expected that the Department will try negotiating with interested persons, although the new law does not specifically so state. While a "composition agreement" technically cannot result from such negotiations, they may result in the issuance of a closing certificate satisfactory to all parties.

If a voluntary agreement cannot be achieved on an issue necessary for determination of the tax, any party involved may petition the county court to decide the issue [new sec. 72.30(3)(b)]. After court involvement on the single issue or set of issues, the parties may be better able to reach final agreement. If either party is dissatisfied, he may appeal the court's decision.

If, however, no party petitions the county court, the Department or authorized public administrator will probably terminate the negotiations by issuing a closing certificate determining the tax as it views the issues. Within six months of the certificate's date, an application for a hearing on it before the county court may be filed by the attorney general, Department of Revenue, public administrator, district attorney or any other person dissatisfied with an appraisal, an assessment or the tax determination. The applicant must file a written notice with the court stating the grounds of the application. The six month statute of limitations, however, will not run against the Department of Revenue in cases of fraud or collusion or where property is not disclosed in the return [new sec. 72.30(4)].

Interstate arbitration or compromise of death taxes. A new feature of the inheritance tax law provides two methods of resolving disputes between states each of which claim that a decedent was its resident at the time of his death.⁴⁷ One way the statute permits such disputes to be resolved is by permitting the Department of Revenue to settle the dispute by entering into written agreement with the taxing authority of another state and with the estate's personal representative, special administrator or trustee [new sec. 72.35(1) and (7)].

Secondly, the statute permits the Department of Revenue to enter a written agreement with the specified parties wherein all may agree to submit the dispute to an arbitration panel [new sec. 72.35(1)]. In this event, the new law clearly sets out the powers of the panel and the procedures which must be followed [new sec. 72.35(2) to (8)].

Tax liens. As a general rule, under both the old and new laws, until the inheritance tax is paid, it is a lien upon the property subject to the tax [old sec. 72.05(1); new sec. 72.25 intro.]. The rule has two exceptions. First, the Department of Revenue or authorized public administrator may issue a release of all or a part of the lien if satisfied that collection of the tax will not be jeopardized. Secondly, the sale of property subject to the inheritance tax by a personal representative, personal administrator or trustee constitutes a release of lien on that property; the lien is transferred to the sale's proceeds.

The distributee is noticeably absent from the list of persons who can effect a release of lien on property by selling it. In the event of such sale without payment of the inheritance tax, the lien continues (with no abbreviated statute of limitations as specified for property subject to the gift tax) and the distributee continues to be personally liable for the tax.

Personal liability. The new law contains a clear statement of the extent of personal liability for the tax of various parties.⁴⁸ Each

47. WIS. STAT. § 72.35 (1971) was patterned after the *Uniform Act on Interstate Arbitration of Death Taxes* (1944 Act), 9B UNIFORM LAWS ANNOTATED 338 (1966). See Advisory Committee Minutes, March 26, 1971 at 17.

The Wisconsin statute differs from the uniform act in two basic respects. First, the Wisconsin statute eliminates language of the uniform act which would have made the statute applicable only to cases in which each of the arbitrating states had an "identical or substantially similar" statute. Secondly, the Wisconsin provision applies only where a decedent died on or after May 14, 1972, whereas the uniform act provides that it applies to estates of decedents dying both before and after its enactment.

48. Compare WIS. STAT. § 72.05(1)(1969) with WIS. STAT. § 72.21 (1971).

personal representative, special administrator and trustee of a living trust is separately liable for all inheritance tax, provided the total tax does not exceed the clear market value of all property under his control which is subject to the tax. Each distributee and trustee of a testamentary trust is also liable for all inheritance tax, but again this liability cannot exceed the value of property transferred to him [new sec. 72.21].

The language of the new law permits property to be liable for payment of inheritance tax which is not attributable to the transfer of the property. For example, property of distributee "A" may be liable for the inheritance tax (to the extent of property transferred to him) resulting from tax on a transfer to distributee "B" if the inheritance tax cannot be collected from distributee "B".

Tax payment. The new law retains the central role of the county treasurer in the payment of inheritance tax [old sec. 72.05(2) and (3); new sec. 72.22(3)]. All payments and estimated payments must be made to the county treasurer. He must issue an original receipt and three copies and distribute the original and one copy to the payor, one copy to the Department with his monthly report and may retain one copy for his own records.

When a court proceeding is involved in settling an estate, a final judgement may not be entered until proof that the tax has been paid is filed with the court [new sec. 72.30(3)(e)]. When there is no court proceeding, to ensure that inheritance taxes are paid, the Department of Revenue will presumably institute a system of matching its copy of closing certificates with its copy of tax payments receipts.

Tax refunds. The new law simplifies the manner in which a person may receive an inheritance tax refund [old sec. 72.08; new sec. 72.24]. When the tax has been overpaid, the county treasurer, upon certification by the Department of Revenue or the county court, may refund the excess to the payor or other person entitled to it out of inheritance tax funds in his possession. If the county treasurer does not have sufficient funds, the refund will be paid by the state treasurer.

The new law eliminates court involvement in refunds which result from debts proven after the tax has been determined [old sec. 72.08(1)]. In addition, the new law eliminates the one year statute of limitations for refunds of erroneously paid taxes [old sec. 72.08(2)]; under the new law, there is no such statute of limitations. Refunds, however, will continue to be paid without any interest.

3. The Public Administrator

The office of the public administrator has been in existence

since 1878.⁴⁹ In that year, the statutes designated the public administrator as the official to act in an estate of a decedent who died intestate, leaving property but leaving no spouse or other heirs or when no one else took charge of and managed decedent's property which he administered. (Current statutes continue to designate the public administrator as the person responsible for taking charge of an estate when others fail to act.)⁵⁰

When the basis for Wisconsin's present inheritance tax law was enacted in 1903, the public administrator was given a central role in the process of tax determination. The 1903 law directed public administrators to assist county judges in inheritance tax matters. In 1909, the law was amended⁵¹ to require notification of the public administrator in all inheritance tax proceedings. A 1911 law⁵² provided for the determination of the inheritance tax in Dane County for estates of nonresident decedents when regular administration was not otherwise necessary and provided for the appointment of the public administrator of Dane County as special administrator of such estates. In 1913, public administrators were given the powers to apply for reassessment of a tax, to proceed when it appeared that a tax was due and unpaid, and to apply for administration for purposes of determining the inheritance tax when no other person had applied.⁵³

Just as the non-inheritance tax functions of the public administrator were retained in the 1969 Probate Code revision,⁵⁴ the functions of the public administrator in an inheritance tax determination were retained in the 1971 inheritance tax revision. The new law not only retained the position, but expanded both its powers and duties by permitting public administrators to act independently in no-tax situations. In addition, the new law enables the Department of Revenue, by rule, to increase the authority of individual public administrators to tax cases involving up to \$50,000 of property.⁵⁵

Under both the old and new laws [sec. 253.25], each judge of a court having probate jurisdiction must appoint a public adminis-

49. See WIS. REV. STAT. §§ 3818-3820 (1878).

50. See, e.g., WIS. STAT. §§ 856.07(2), 862.07(1), (2) and (3) and 879.55 (1971).

51. Wis. Laws 1909, ch. 504.

52. Wis. Laws 1911, ch. 530.

53. Wis. Laws 1913, ch. 627.

54. See Wis. Laws 1969, ch. 339.

55. It is worth noting, however, that despite the expanded role of the public administrator in the new law, from a technical point of view, the way the new law is drafted permits the elimination of this role by some careful, but relatively simple, amending. Such an amendment could, for example, delete the public administrator's role and substitute for it the Department of Revenue or district attorney.

trator.⁵⁶ The public administrator "shall be an attorney if one is available [new sec. 253.25(1)]. In counties having a population of over 200,000 (Milwaukee, Waukesha and Dane⁵⁷ Counties), an assistant district attorney may be appointed public administrator. When an assistant district attorney is so appointed, his duties in an estate are limited to inheritance and estate tax determination, he may not act as a personal representative or a special administrator [new sec. 253.25(1)], and his fees for these services must be turned over to the county for public use [new sec. 72.31(4)(c)].

The new law clarifies the status of the public administrator, except when he is an assistant district attorney, as that of an independent contractor, "retained by the Department of Revenue" [new sec. 253.25(4)]. The public administrator is thus not a county employee⁵⁸ and will not normally be subject to nor qualify for such employee-connected obligations and programs as withholding of federal and state income taxes, workmen's compensation, unemployment compensation and group retirement, health, accident, wage continuation or life insurance programs.

The public administrator's fees will continue to be established by the county court and paid out of inheritance taxes collected. Under the old law [sec. 72.17(3)], the public administrator was entitled to 5% of the gross tax (not including the portion attributable to surtax), subject to minimum and maximum limits. The minimum fee for an estate in which he acted was \$3 or the actual tax, whichever was less; the maximum fee was \$25. However, in cases of unusual difficulty where the tax exceeded \$500, the judge was permitted to allow such additional compensation as he deemed justified. In no-tax cases, no regular fees and no additional fees were authorized.

Under the new law [sec. 72.31(4)(b)], a new fee schedule for public administrators is established. A public administrator is entitled to a minimum fee of \$5 for all cases "in which he acted whether

56. An early draft of the Advisory Committee provided that each probate judge must appoint a public administrator every two years, whose appointment would be effective upon confirmation of the Department of Revenue. LRB-639/3 at 57, lines 21-27. The concepts of two year terms and Department confirmation were subsequently deleted at the request of the Department. Advisory Committee minutes, February 12, 1971 at 12-14.

57. Under this special statutory provision covering large counties, in June 1972, Dane County Court Judge P. Charles Jones appointed an assistant district attorney to act as public administrator. For newspaper accounts and editorials generally commenting favorably on this, see *Capital Times* (Madison), June 2, 1972 at 1 and June 3, 1972 at 24, (editorial); *Wisconsin State Journal*, June 26, 1972 at sec. 1, p. 10 (editorial); and *Milwaukee Journal*, June 15, 1972 at part I, p. 20 (editorial).

58. Cf. Advisory Committee Minutes, February 12, 1971 at 13-14.

or not there is a tax". The law does not specify whether he will be deemed to have "acted" in a tax case where he merely receives a copy of the tax return and the matter is handled by the Department of Revenue.

The basic fee for the public administrator is still 5% of the first \$500 of tax. In addition to this, however, he is entitled to fees not exceeding 1% of the tax over \$500 and there is no statutory maximum fee. In cases of unusual difficulty, the county court may allow such additional fees as it deems justified. The additional fees may be granted in both tax and no tax cases.

Debate will no doubt continue over the proper role, if any, which the public administrator should have in inheritance tax determination. Adversaries of the public administrator system have argued that it is undesirable as a patronage appointment, that it is too costly⁵⁹ and that many of the functions which the public administrator performs are more private than public in nature (such as advising estates of the proper forms necessary and helping resolve tax disputes) and should not be compensated out of public tax revenues. Proponents argue that no realistic, economical substitute can be devised to perform the same functions. Both sides will undoubtedly be called upon to prove their positions in the face of public demand for further reform and simplification of inheritance tax and probate procedures.

C. Subchapter III: Estate Tax

The state estate tax was adopted in 1931⁶⁰ to enable Wisconsin to take full advantage of the credit allowed by the federal estate tax for state death taxes paid. The estate tax, which applied only when a death gives rise to the federal estate tax, equals the amount, if any, by which the maximum allowable federal credit⁶¹ exceeds

59. The following data relating to the administrative costs of collecting the inheritance tax was included in a statement of James R. Morgan, then Secretary of the Department of Revenue, entitled "Proposed Changes In The Administration Of The Inheritance Tax", dated October 2, 1972, and presented to the Advisory Committee on that date (at Attachment III):

Fiscal Year Ending June 30	Public Administrator Fees	Department of Revenue Costs
1967	\$387,821	\$ 98,406
*1968	\$525,077	\$112,343
1969	\$482,144	\$124,080
1970	\$561,505	\$121,300

60. Wis. Laws 1931, ch. 426.

61. Cf. INT. REV. CODE OF 1954, § 2011.

an estate's total non-federal death taxes. Each practitioner processing an estate which involves the federal estate tax should consider whether or not the state estate tax applies.

Subchapter III of new WIS. STAT. ch. 72 (1971) contains the state's estate tax laws which potentially apply to all transfers because of a death involving a federal estate tax which occurred on and after May 14, 1972. This new law restates the old law in more modern statutory language and makes only two substantive changes. They are discussed below.

Removal of surtax. Under the old law, after the estate tax was computed, the 30% surtax had to be added to the total estate tax payable.⁶² With the new law's simplification of rates for each tax bracket, a separate surtax is no longer imposed.

Estate Tax Determination. Under the old law [sec. 72.55], the amount of estate tax due was determined by the county court. The tax was paid to the cnty treasurer in the same manner as the inheritance tax, but the county, while it retained 7 ½% of the inheritance tax (excluding the surtax), did not retain a portion of the estate tax.

The new estate tax law does not specify how the estate tax is to be determined or paid. However, a section of the new estate tax law provides that the provisions of the inheritance tax subchapter shall be operative if they are applicable and not in conflict with the estate tax subchapter [new sec. 72.64]. In addition, WIS. STAT. § 72.05 (1971) permits the Department to make rules and prescribe forms required to compute, assess and collect taxes imposed by the chapter. Extrapolating these provisions, they appear to require that the Department of Revenue permit the self-assessment method in determining the estate tax, similar to the inheritance tax method, and permit the Department to prescribe the forms necessary to compute, assess and collect this tax.

D. Subchapter IV: Gift Tax

Subchapter IV of WIS. STAT., ch. 72 (1971) contains the new state gift tax laws which apply to all gifts transferred on and after

62. For an argument that application of the surtax to the state estate tax, which authorizes taxing the transfer of a resident decedent's property located outside Wisconsin, is unconstitutional, see 1952 WIS. L. REV. 537. Also see *Rev. Rul.* 56-230, C.B. 1956-1, 660.

Evidence exists that the surtax on the estate tax has been a contributing factor in encouraging persons to leave the state to avoid Wisconsin's death taxes. See Advisory Committee Minutes, February 27, 1970 at 7-8 and October 2, 1970 at 5-6, and Udell and Strang (reprint) at 7-8.

May 14, 1972. Unlike the changes in the inheritance tax law, the most significant changes from the old gift tax law occur in the substantive provisions, not in provisions pertaining to administrative aspects of tax determination. For the most part, these changes coordinate gift tax statutes with comparable inheritance tax provisions. To some extent, state gift tax laws are paralleled with the federal laws on the subject.

The first portion of this discussion reviews the most significant changes made by Wis. Laws 1971, ch. 310 to (non-administrative) substantive areas of gift tax. Similarities to comparable inheritance tax laws and to federal gift tax provisions are noted. The second portion of the discussion will review the largely unchanged administrative method of gift tax determination. The last portion of this discussion analyzes some problems which may confront the practitioner in 1973 for gift tax returns covering 1972 gifts.

1. Substantive (Non-administrative) Changes

Transfers taxable. Provisions of the new law [sec. 72.75] which describe transfers subject to the state gift tax law are a restatement of similar provisions of the old law [secs. 72.76(1) and (2)]. Under the new law, as under the old, the residence of the donor is of primary importance. Transfers made by a Wisconsin resident are taxable if they are of real or tangible personal property in this state, tangible personal property which is outside of Wisconsin only temporarily or for the sole purpose of deposit or safekeeping, or any intangible personalty, [new sec. 72.75(1)(a) and 72.76(1)(b)].

Transfers by nonresident donors are taxable if the property transferred is "within the jurisdiction of this state" [new sec. 72.75 (1) (b)].⁶³ Thus, transfers are generally taxable if they are of a nonresident's real or tangible personal property in Wisconsin.

Transfers exempt. Most exempt transfers enumerated in the statute restate the old law. Generally, they allow tax free transfers to units of government (federal, state and municipal) and to certain types of organizations operating principally within this state and organized and operated exclusively for religious, charitable, scientific, humane or educational purposes [new secs. 72.76(1)(h) to (n)].

Practitioners are cautioned to examine carefully the precise statutory language of these statutes when planning both gifts and

63. See footnote 29, *supra*.

bequests to exempt organizations. Be especially mindful of any changes in the new statutes' wording. While the gift tax and inheritance tax statutes [new sec. 72.15(1)] on the subject are very similar, they are not identical. Drafting a will in the language of the gift tax exemptions could possibly result in the imposition of a sizable inheritance tax, since a nonqualifying charity would likely be a class D distributee (with a low exemption and high tax rates).

Three new gift tax exemptions are found in the new law. First, amounts are exempt from the gift tax which an employer transfers to the distributee or estate of a deceased employee, *if* these amounts qualify as an employee death benefit taxable as income or *if* they are excludable from gross income under the Internal Revenue Code § 101(b) [new sec. 72.76(1)(d)].

Secondly, the state law adopts a federal gift tax exemption⁶⁴ involving real estate jointly owned by spouses with the right of survivorship [new sec. 72.76(1)(f)]. Under this new exemption, two types of transfers are exempt: (a) when one spouse holds or acquires real property in his or her own name, then transfers the property to both spouses as joint tenants, and (b) when one spouse acquires real property with his or her own funds and takes title in the name of both spouses as joint tenants.

In these situations, neither spouse need file a gift tax return to claim this exemption. However, either spouse (not just the donor as in the federal law) may elect to treat such transfer as a gift. This election must be made by the timely filing of a gift tax return for the year involved, reporting the gift (even though no tax may be due). This election will benefit couples who anticipate sale of the joint property prior to the death of either and who want to be assured of being permitted to split any profit from the sale on their state income tax returns. Gift tax returns so filed, however, will not prove contribution toward the joint property for inheritance tax purposes when the donee is the survivor but may help when the donee dies first.⁶⁵

Thirdly, if a donor pays gift tax directly to the Department of Revenue on a prior gift to a donee, this tax payment will not be deemed a gift to the donee [new sec. 72.76(1)(g)]. If the donor pays the tax to the donee, however, this is an additional taxable gift.

64. See INT. REV. CODE OF 1954 § 2515.

65. The new law does not specify whether a transfer of property owned by spouses as joint tenants to themselves as tenants in common is taxable gift. This author believes that, if a gift election was made when the joint tenancy was created, it should not be.

Under the old law, any payment of the gift tax by the donor was considered an additional gift [old sec. 72.81(3)].

Classification of donees. Several changes in the gift tax which are made by the new law are found in the classification of donees for purposes of exemptions and tax rates. Four classes of donees are grouped in the new law (classes A, B, C and D) [new sec. 72.80]. These donee classes contain the same types of persons as the four classes of distributees for inheritance tax (except that gift tax donee class A contains the donor's spouse, while inheritance tax distributee class A contains the decedent's surviving spouse).

The changes in classification of donees involve the reclassification of a donor's sons-in-law and daughters-in-law. Under the new law, these donees are in donee class A, the most preferred class. Under the old law, the wife or widow of a donee's son and the husband of a donee's daughter were in the approximate equivalent status to donees in new donee class B [old sec. 72.77(2)], and the widower of a donee's daughter was in the approximate equivalent status to donees in new donee class D [old sec. 72.77(4)].

Table 5 sets out the old gift tax law's classification of donees, their exemptions and statutory tax rates. [See old secs. 72.77, 72.78 and 72.80]. Table 6 sets out the same information but gives the "effective rates" of gift tax, *i.e.*, the rates computed by starting with the basic or other rates, adding the 30% surtax and deducting the 5% early payment discount. Table 7 illustrates the new gift tax law's classification of donees, their exemptions and tax rates [new secs. 72.80, 72.81, 72.82 and 72.83].

Annual exemption. Probably the most significant change in the new gift tax law is the increase in the annual exemption for each donee from \$1,000 [old sec. 72.80(1)] to \$3,000 [new sec. 72.81]. The new amount parallels the annual \$3,000 federal "exclusion".⁶⁶ This change alone should cause a major reduction in the required number of gift tax returns.⁶⁷

Personal Exemptions. In addition to an annual exemption for personal exemptions for a limited number of donees [old secs. 72.80(2) to (4); new sec. 72.82(1)]. These additional exemptions are permitted only once during the donees' lifetimes and are limited to class A donees, persons most closely related to donors by blood and marriage. Under both the old and new laws, the annual and

66. INT. REV. CODE of 1954, § 2503(b).

67. See Advisory Committee Minutes, March 20, 1970 at 5-7 and October 2, 1970 at 23-24.

personal exemptions must be taken out of the first \$25,000 transferred.

The new law raises the personal exemption for husbands from \$5,000 to \$15,000, which equals the personal exemption allowed wives. Other class A donees whose personal exemptions are increased are lineal ancestors and lineal decendants (from \$2,000 to \$4,000) and wives or widowers of a son, husbands or widowers of a daughter, and mutually acknowledged children, their spouse and issue (from zero to \$4,000). The broadened definition of "mutually acknowledged child" [new sec. 72.01(15)] and the inclusion of such person's spouse and issue as class A donees should increase the importance of gifts in estate planning where such persons are involved.⁶⁸

Tax rates. Just as in the new inheritance tax law, the changes in tax rates under the new gift tax law greatly simplify tax computation. Under the old law, calculation of tax on a transfer in one tax bracket could have required up to three computations (involving primary or secondary rates, the surtax and the early payment discount) [old secs. 72.77 and 72.78]. Under the new law, only one computation in each tax bracket is required [new sec. 72.83] and the tax rates for each class of donees is the same rate as for the corresponding class of inheritance tax distributees. Each year, exemptions are taken out of the first \$25,000 transferred and tax computation begins on amounts at the lowest tax rates.

Except for several new class A donees, the new rates are slightly below the old before-discount, effective rates and only slightly higher than the after-discount, effective rates. The donees whose tax rates are significantly reduced are the wife or widow of a donor's son and the husband or widower of a donor's daughter. As a practical consequence, annual gifts to these types of donees may prove a useful tax-free method of reducing the size of large estates.

Also similar to the new inheritance tax law, the simplification of tax rates necessitated an adjustment in the maximum portion of a gift which may be taken in payment of the gift tax. The maximum has been adjusted from 15% to 20% [old sec. 72.78(5); new sec. 72.84].

68. The definition of "mutually acknowledged child" includes a five year duration of the relationship, "or a shorter period only if that shorter period immediately preceded the decedent's death" Wis. STAT. § 72.01(15) (1971). The new law may leave room for differing interpretations of the following question: If annual gifts have been made to such a child who, at decedent's death, had only established the relationship for the shorter period, is the child a "mutually acknowledged child" for *gift* tax purposes? This author believes so.

Another similarity between the new inheritance and gift tax rates is that, despite the graduated nature of both taxes, the rates are not increased once a certain dollar plateau is reached. In both instances, this results from the 20% statutory maximum. Because of the differences in exemptions for the inheritance and gift taxes, however, the upper dollar amounts are not the same. For gift tax, they are \$678,000 for class B donees; \$133,500 for class C donees; and \$78,000 for class D donees.

Neither the old nor the new state gift tax laws permit "split gifts" by spouses to third persons. Under federal law,⁶⁹ a donor's spouse may join in a gift to obtain the benefit of the spouse's annual exclusion and lifetime exemption. Wisconsin has no similar provision. However, if one spouse wishes to make a large gift of his or her own property, careful planning can reduce state gift taxes. The amount of tax may be substantially reduced, for example, if the donor first makes a gift to his or her spouse of one half the value of the asset, then each spouse makes a gift of their own half share to the donee.

Interest. Under the old law, interest on late gift taxes was charged at the rate of 10% of the tax per year from the date the tax was due until paid. If a gift tax return was audited and an additional tax assessment was made, interest on the assessment, beginning on the due date of the tax was charged as follows: (a) at the rate of 6% per year if paid within 30 days; or (b) at the rate of 10% per year if not paid within 30 days [old secs. 72.81(3) and (4)]. Under the new law, if any tax imposed is not timely paid, interest is charged at the single rate of 8% per year from the date the tax was due [new sec. 72.85(3)].

Penalty. Previously [old sec. 72.81(7)], a penalty of 25% of the tax was imposed if a person required to file a return failed either to file, to keep records or to supply any information required by the Department of Revenue. Under the new law [sec. 72.85(3)], a penalty of 5% of the tax is imposed if the required tax return is not timely filed.

Both the old and new laws provide for an additional criminal penalty on any person who willfully attempts to evade or defeat the tax, or who makes any false or fraudulent return or statement with intent to evade or defeat the tax. The penalty can be a fine ranging from \$100 to \$5,000 or imprisonment for up to one year or both [old sec. 72.81(8); new sec. 72.86(6)].

69. See INT REV. CODE of 1954, § 2513.

2. Administrative Changes in Gift Tax Determination

The administrative method of gift tax determination is largely unchanged by the new law. A tax return is still required from both the donor and the donee. The returns, together with any tax due, must be filed by April 15 of each year and must cover the preceding calendar year. Some significant administrative highlights of the new law are summarized below.

Filing requirement. Under the old law [old sec. 72.81(2)], a gift tax return was required if the aggregate value of transfers in a calendar year from a donor to a donee exceeded \$1,000 in value. No return was required for gifts valued at \$1,000 or less, or when a donor made gifts to several donees, the sum of which exceeded \$1,000, but none of which exceeded \$1,000 to an individual donee. A gift tax return was required, however, when the gifts to a single donee exceeded \$1,000 even when no tax was due because of personal exemptions.

The new law [new sec. 72.85(2)] requires filing of a gift tax return if the aggregate value of gifts in a calendar year from a donor to a donee exceeds \$3,000 in value. In addition, the new law requires filing if either spouse elects to treat as a gift a transfer of real property either held in the name of one spouse and transferred to the names of both as joint tenants or acquired with the funds of one spouse in the names of both spouses as joint tenants [new sec. 72.76(1)(f)].

Liability for the tax. The old law specified that, while both the donor and donee were required to report gifts, the gift tax was payable by the donee [old sec. 72.81(3)]. The new law requires both the donor and donee to "report the transfers and pay the tax" [new sec. 72.85(2)].

Both the old and new law provide that if the tax is not paid by the due date, both the donor and donee are jointly and severally liable for the tax and any penalty and interest [old sec. 72.81(3); new sec. 72.85(3)]. Unlike the old law, the new law specifies that if either pays the tax, there is no right of contribution unless the payor reserves it in writing on the filed tax return [new sec. 72.85(3)].

Statute of limitations. Under the old law, filed gift tax returns could only be audited within three years of their due date [old sec. 72.81(4)]. If a gift tax return was not filed, the statute of limitations did not begin running.

The new law increases the period within which a gift tax return may be audited to four years [new sec. 72.86(1)] to parallel the four

year statute of limitations for the audit of income tax returns.⁷⁰ As under the old law, the statute of limitations does not begin running if a gift tax return is not filed.

Refunds. Under both the old and new laws, when a transfer is taxed as a gift and then becomes taxable in the estate of the donor-decedent, the state inheritance or estate tax or both must be paid and application must be made for a gift tax refund [old sec. 72.75(4); new sec. 72.87(1)].⁷¹ If the person who paid the tax is living, he may apply for and receive the refund without interest. If the decedent paid the tax, the refund without interest is payable to his estate and must be included as an asset in the inventory of the estate.

3. Problems Which May Arise Regarding 1972 Gifts

The gift tax laws may prove troublesome for gift tax returns filed in 1973 covering 1972 gifts, gifts in the first year in which the new law became effective. Two general rules should be followed:

A. Use the old law to compute gift tax on all transfers made *prior to May 14, 1972*. That is, the annual exemption for all donees is \$1,000; the personal exemptions for spouses are unequal (\$5,000 for husbands; \$15,000 for wives) and the only other donees receiving personal exemptions are lineal ancestors and lineal descendants (\$2,000); and calculating the tax on amounts in each tax bracket may involve up to three computations (basic or secondary rates, plus surtax, minus early payment discount).

B. Use the new law to compute gift tax on all transfers made *on or after May 14, 1972*. That is, the annual exemption for all donees is \$3,000; the personal exemption for both spouses is the same (\$15,000) and all class A donees receive personal exemptions (\$4,000); and calculating the tax on amounts in each tax bracket involves a single computation.

If no gifts were made by a donor to a donee prior to May 14, 1972, each donee is entitled to the new exemptions. That is, each donee may annually receive \$3,000 tax free and class A donees may receive the new personal exemptions without a tax being incurred.

If gifts were made prior to May 14, 1972 by a donor to a donee which exhausted the \$1,000 annual exemption, amounts over the annual exemption must be applied toward any remaining personal exemption and then a tax imposed on the balance. The effect of

70. Cf. WIS. STAT. §§ 71.11(21) (bm) and 72.81(5) (1969); Advisory Committee Minutes, April 24, 1970 at 5.

71. Cf. Advisory Committee Minutes, October 2, 1970 at 25.

the new law was that, on May 14, 1972, each donee received an additional \$2,000 annual exemption for 1972. Also, on May 14, 1972, class A donees also received additional personal exemptions. On that date, each class A donee's personal exemption equalled the amount specified in the new law reduced by any amount already utilized as a personal exemption.

If gifts were made by a donor to a donee both before and after the new law's effective date, both laws apply in calculating any tax due. The two amounts of tax must be added to arrive at the total tax due for the year. The gift tax returns covering 1972 may appear complicated, but the practitioner should keep in mind the new law's effective date and carefully follow the instructions.

A special problem exists for the situation where gifts are made by a donor to a donee both before and after the new law's effective date and where the gifts made before May 14, 1972 exhausted the lowest tax bracket. For example, assume that a father who had not given his son a gift in prior years made two gifts in 1972: \$25,000 on May 1 and \$25,000 on June 1. Out of the first \$25,000 gift, \$1,000 is tax free because of the old annual exemption, \$2,000 is tax free because of the additional personal exemption and the remaining \$22,000 is taxable at the lowest rates (2% plus the 30% surtax, minus the 5% early payment discount). Out of the second \$25,000 gift, \$2,000 is tax free because of the additional annual exemption, \$2,000 is tax free because of the additional personal exemption and the remaining \$21,000 is taxable.

But out of which tax bracket (2 ¼ % or 5%) will the additional exemptions come which arise out of the second gift? Will they come out of the lower bracket, as WIS. STAT. § 72.82 (1) (intro.) (1971) appears to direct? Or will they come out of the higher bracket because the additional exemptions accrued only on the effective date of the new law and could not have been utilized if the second gift were not made? The new law does not answer these questions.⁷²

CONCLUSION

Wis. Laws 1971, ch. 310, which has been reviewed in this arti-

72. At the Friday, October 16, 1972 session of the annual tax workshop of the Institute for Continuing Legal Education, Donald E. Kunde, Chief Auditor, Fiduciary and Gift Tax Section, Department of Revenue, stated that such additional exemptions would be permitted out of the lowest tax bracket because of the mandate of WIS. STAT. § 72.82(1) (intro) (1971). This oral communication, however, admittedly was not a formal, binding statement of the Department's position.

cle, is the product of dedicated effort and sincere desire to reform the law by highly trained and qualified practitioners and students in the field. It represents the combined views of several individuals with different experiences and attitudes.

Interested parties are undoubtedly awaiting evidence of the impact of this major tax revision. The law's impact will be evaluated from several divergent points of view: by the Department of Revenue, by the organized Bar, by distributees and donors, by crusading probate reformers and, ultimately, by the state Legislature.

The new law represents a significant step in the direction of uncomplicating routine probate procedures. In theory, a distributee or donor (or, conceivably, a tax preparation service) could prepare an inheritance tax return and eliminate attorney involvement in this aspect of estate settlement and property transfers. The removal of the requirement of court participation in inheritance tax determination is an important and necessary threshold step toward further probate simplification.

Several suggestions for minor technical changes to the new law have already been made. These will undoubtedly be formalized when the 1973 Legislature convenes. An indication, however, of two broad areas of concern, which will likely occupy the center stage of all future proposals for change in the inheritance tax law, were evidenced in the following two concluding paragraphs of a press release issued by the Department of Revenue on May 10, 1972, upon the Governor's signing of 1971 Senate Bill 471:

In signing the reform measure, [the] Governor . . . expressed concern that the position of public administrator was not abolished. "It is my opinion," asserted the Governor, "that the efficiency and fair compensation for this position are not appropriately guaranteed either by his manner of selection or by his often close association with interested parties." Accordingly, he plans to ask the Legislature for a measure to correct that situation.

Secondly, [the] Governor . . . has asked [the] Revenue Secretary . . . to monitor collections under the new inheritance tax [law] and to affirm the effects of the new law. Most particularly, the Governor and his tax advisor are interested in the impact upon surviving spouses.

MARQUETTE LAW REVIEW



SUPPLEMENT TO:

THE NEW WISCONSIN INHERITANCE,
ESTATE & GIFT TAX LAW

—THOMAS M. BOYKOFF

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TABLE 1
INHERITANCE TAX SURVEY OF ESTATES CLOSED IN CALENDAR YEAR 1968
AMOUNTS RECEIVED AND TAX PAID BY CLASSES OF BENEFICIARIES
PERCENTAGE RELATIONSHIP TO TOTALS, ALL ESTATES

CLASS	ESTATES UNDER \$50,000			ESTATES OVER \$50,000			ALL ESTATES		
	PERCENT OF BENEFICIARIES	PERCENT RECEIVED	PERCENT OF TAX PAID	PERCENT OF BENEFICIARIES	PERCENT RECEIVED	PERCENT OF TAX PAID	PERCENT OF BENEFICIARIES	PERCENT RECEIVED	PERCENT OF TAX PAID
Husband	4.72%	5.05%	2.08%	.30%	2.41%	4.22%	5.02%	7.46%	6.30%
Wife	5.13	10.03	3.45	1.86	17.10	27.46	7.00	27.13	30.91
Children or Parents	27.59	16.94	8.36	7.15	21.56	26.66	34.74	38.50	35.02
Subtotals	37.44%	32.03%	13.90%	9.32%	41.08%	58.33%	46.76%	73.09%	72.23%
Grandchildren or Great Grandchildren	3.96%	.77%	.30%	2.33%	2.18%	1.61%	6.29%	2.95%	1.91%
Son-in-Law or Daughter-in-Law	.58	.26	.14	.24	.26	.25	.82	.52	.39
Brothers or Sisters	9.40	4.41	2.78	2.08	4.70	5.50	11.48	9.12	8.28
Nieces-Nephews Their Descendants	12.59	2.59	1.44	4.70	5.63	6.17	17.29	8.21	7.61
Uncles-Aunts Their Descendants	1.37	.32	.62	.81	.66	1.50	2.19	.98	2.12
Strangers	6.41	1.46	3.83	3.01	1.29	3.63	9.42	2.75	7.46
Charitable	3.37	.45	0	2.39	1.92	0	5.76	2.37	0
TOTALS	75.12%	42.30%	23.01%	24.88%	57.70%	76.99%	100.00%	100.00%	100.00%

Where totals do not reflect the exact sum of columns, variance results from rounding.

TABLE 2
INHERITANCE TAX
CLASSIFICATION OF DISTRIBUTEES, EXEMPTIONS AND STATUTORY TAX RATES*
FOR DEATHS OCCURRING BEFORE MAY 14, 1972

Relationship of Distributees to Decedent	Exemptions	Balance of First \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	Over \$500,000
Husband, wife, lineal issue, lineal ancestor, wife or widow of a son, husband of a daughter, adopted or mutually acknowledged child	Widow—\$15,000 Widower—\$5,000 Other—\$2,000	2%	4%	6%	8%	10%
Brother, sister, or a descendant of brother or sister	\$500	2%	4%	6%	8%	10%
Brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother	\$250	6%	12%	18%	24%	30%
Persons in any other degree of collateral consanguinity, a stranger in blood, or a body politic or corporate	\$100	8%	16%	24%	32%	40%

* Added to these rates was an additional 30% surtax. If the tax was paid within one year of decedent's death, 5% of the tax could be deducted. The maximum inheritance tax was 15% of a transfer (to which was added the surtax and, if paid within one year of decedent's death, subtracted 5% of the tax).

TABLE 3
INHERITANCE TAX
CLASSIFICATION OF DISTRIBUTEES, EXEMPTIONS AND EFFECTIVE TAX RATES*
FOR DEATHS OCCURRING BEFORE MAY 14, 1972

Relationship of Distributees to Decedent	Exemptions	Balance of First \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	Over \$500,000
Husband, wife, lineal issue, lineal ancestor, wife or widow of a son, husband of a daughter, adopted or mutually acknowledged child	Widow—\$15,000 Widower—\$5,000 Other—\$2,000	2.47%	4.94%	7.41%	9.88%	12.35%
Brother, sister, or a descendant of brother or sister	\$500	2.47%	4.94%	7.41%	9.88%	12.35%
Brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother	\$250	7.41%	14.82%	22.23%	29.64%	37.05%
Persons in any other degree of collateral consanguinity, a stranger in blood, or a body politic or corporate	\$100	9.88%	19.76%	29.64%	39.52%	49.40%

*These rates represent the "effective" rates of inheritance tax, i.e., the basic or other rates increased by the 30% surtax and reduced by the 5% early payment discount.

The maximum actual portion of bequest which could have gone toward payment of inheritance tax was 18.53%.

TABLE 4

**INHERITANCE TAX
CLASSIFICATION OF DISTRIBUTEES, EXEMPTIONS AND TAX RATES
FOR DEATHS OCCURRING ON AND AFTER MAY 14, 1972**

Relationship of Distributees to Decedent	Exemptions	Balance of First \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	Over \$500,000
A. Surviving spouse, lineal ancestor, wife or widow of a son, husband or widower of a daughter, adopted or mutually acknowledged child	Surviving spouse—\$50,000 Other—\$4,000	2.5%	5.0%	7.5%	10.0%	12.5%
B. Brother, sister, or descendant of brother or sister	\$1,000	5.0%	10.0%	15.0%	20.0%	25.0%
C. Brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother	\$1,000	7.5%	15.0%	22.5%	30.0%	30.0%
D. Persons in any other degree of collateral consanguinity, strangers in blood or other persons	\$500	10.0%	20.0%	30.0%	30.0%	30.0%

The above rates simplify tax computation by eliminating the "emergency rates" (surtax) and the 5% early payment discount. No inheritance tax shall exceed 20% of the value of the property transferred to any distributee.

TABLE 5
GIFT TAX
CLASSIFICATION OF DONEES, EXEMPTIONS AND STATUTORY TAX RATES*
FOR GIFTS MADE BEFORE MAY 14, 1972

Relationship of Donee to Donor	Personal Exemptions	Annual Exemptions	Balance of First \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	Over \$500,000
Husband, wife, lineal issue, lineal ancestor, adopted or mutually acknowledged child	Wife—\$15,000 Husband—\$5,000 Other**—\$2,000	\$1,000	2%	4%	6%	8%	10%
Brother, sister, a descendant of a brother or sister, the wife or widow of a son, or the husband of a daughter	0	\$1,000	4%	8%	12%	16%	20%
Brother or sister of the father or mother, or a descendant of the brother or sister of the father or mother	0	\$1,000	6%	12%	18%	24%	30%
Persons in any other degree of collateral consanguinity, a stranger in blood, or a body politic or corporate	0	\$1,000	8%	16%	24%	32%	40%

* Added to these rates was an additional 30% surtax. If the tax was paid by the April 15 following the year in which the gift was made, 5% of the tax due could be deducted.

**Mutually acknowledged children and their issue qualified for the most preferential tax rates but not for the \$2,000 personal exemption. The maximum gift tax was 15% of the transfer (to which was added the surtax and, if timely paid, subtracted 5% of the tax).

TABLE 6

GIFT TAX

CLASSIFICATION OF DONEES, EXEMPTIONS AND EFFECTIVE TAX RATES*
FOR GIFTS MADE BEFORE MAY 14, 1972

Relationship of Donee to Donor	Personal Exemptions	Annual Exemptions	Balance of First \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	Over \$500,000
Husband, wife, lineal issue, lineal ancestor, adopted or mutually acknowledged child	Wife—\$15,000 Husband—\$5,000 Other**—\$2,000	\$1,000	2.47%	4.94%	7.41%	9.88%	12.35%
Brother, sister, a descendant of a brother or sister, the wife or widow of a son, or the husband of a daughter	0	\$1,000	4.94%	9.88%	14.82%	19.76%	24.70%
Brother or sister of the father or mother, or a descendant of the brother or sister of the father or mother	0	\$1,000	7.41%	14.82%	22.23%	29.64%	37.05%
Persons in any other degree of collateral consanguinity, a stranger in blood, or a body politic or corporate	0	\$1,000	9.88%	19.76%	29.64%	39.52%	49.40%

* These rates represent the "effective" rates of gift tax, i.e., the basic or other rates increased by the 30% surtax and reduced by the 5% early payment discount.

**Mutually acknowledged children and their issue qualified for the most preferential tax rates but not for the \$2,000 personal exemption.

The maximum actual portion of a bequest which could have gone toward payment of gift tax was 18.53%.

TABLE 7
GIFT TAX
CLASSIFICATION OF DONEES, EXEMPTIONS AND TAX RATES
FOR GIFTS MADE ON AND AFTER MAY 14, 1972

Relationship of Donee to Donor	Personal Exemptions	Annual Exemptions	Balance of First		\$25,000 to \$50,000		\$50,000 to \$100,000		\$100,000 to \$500,000		Over \$500,000
			\$25,000	\$50,000	to \$25,000	to \$50,000	to \$100,000	to \$500,000			
A. Spouse, lineal issue, lineal ancestor, wife or widow of a son, husband or widower of a daughter, or adopted or mutually acknowledged child	Spouse—\$15,000 Other—\$4,000	\$3,000	2.5%	5.0%	7.5%	10.0%	10.0%	12.5%			
B. Brother, sister, or descendant of brother or sister	0	\$3,000	5.0%	10.0%	15.0%	20.0%	20.0%	25.0%			
C. Brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother	0	\$3,000	7.5%	15.0%	22.5%	30.0%	30.0%	30.0%			
D. Persons in any other degree of collateral consanguinity, strangers in blood or other persons	0	\$3,000	10.0%	20.0%	30.0%	30.0%	30.0%	30.0%			

The above rates simplify tax computation by eliminating the "emergency rates" (surtax) and the 5% early payment discount. No gift tax shall exceed 20% of the value of the property transferred to any donee.