

160 A.L.R. 1059 (Originally published in 1946)

American Law Reports | The ALR databases are made current by the weekly addition of relevant new cases.

ALR

G. Van Ingen

Time as of which value of property is to be computed
for purpose of inheritance, succession, or estate tax

[Cumulative Supplement]

The reported case for this annotation is [Caskey v. State, 93 N.H. 438, 43 A.2d 768, 160 A.L.R. 1054 \(1945\)](#).

TABLE OF CONTENTS

[Article Outline](#)

[Table of Cases, Laws, and Rules](#)

ARTICLE OUTLINE

[I Generally; at death](#)

[II One year after death](#)

[III Appreciation or depreciation after death](#)

[IV Inter vivos transfers](#)

[V Future estates](#)

Table of Cases, Laws, and Rules

Canada

[Atty.-Gen. v. Pearce \(1931\) 25 Alberta LR 553 — IV](#)

England

[Atty.-Gen. v. National Trust Co. \[1931\] AC \(Eng\) 818, \[1931\] 3 DLR 689 — IV](#)

United States

[§ 811\(j\) of the Internal Revenue Code. See II, III](#)

Supreme Court

[Maass v. Higgins, 312 U.S. 443, 61 S. Ct. 631, 85 L. Ed. 940, 132 A.L.R. 1035 \(1941\) — II, III](#)

First Circuit

[Levin v. U.S., 373 F.2d 434 \(1st Cir. 1967\) — Supp](#)

Second Circuit

[Cartwright v. U.S., 457 F.2d 567 \(2d Cir. 1972\) — Supp](#)

[Dominick's Estate v. C.I.R., 152 F.2d 843 \(C.C.A. 2d Cir. 1946\) — Supp](#)

Goss v. Fitzpatrick, 97 F. Supp. 765 (D. Conn. 1951) — Supp
McEwan v. C.I.R., 241 F.2d 887 (2d Cir. 1957) — Supp
Saks v. Higgins, 29 F. Supp. 996 (S.D. N.Y. 1939) — II

Third Circuit

C.I.R. v. Stewart's Estate, 153 F.2d 17 (C.C.A. 3d Cir. 1946) — Supp
Duffield v. U.S., 136 F. Supp. 944 (E.D. Pa. 1955) — Supp
Goodman v. Granger, 243 F.2d 264 (3d Cir. 1957) — Supp
Provident Nat. Bank v. U.S., 581 F.2d 1081 (3d Cir. 1978) — Supp
Rosenfield v. U.S., 156 F. Supp. 780 (E.D. Pa. 1957) — Supp
Spaeder v. U.S., 478 F. Supp. 73 (W.D. Pa. 1978) — Supp

Fourth Circuit

Camp v. U.S., 44 F.2d 126 (C.C.A. 4th Cir. 1930) — III
Clark v. U.S., 33 F. Supp. 216 (D. Md. 1940) — III
Mullikin v. Magruder, 55 F. Supp. 895 (D. Md. 1944) — III
Tarver's Estate v. C.I.R., 255 F.2d 913 (4th Cir. 1958) — Supp

Fifth Circuit

Babb v. U.S., 349 F. Supp. 792 (S.D. Tex. 1972) — Supp
Bonner, Estate of v. U.S., 84 F.3d 196 (5th Cir. 1996) — Supp
Brown's Estate v. C. I. R., 425 F.2d 1406 (5th Cir. 1970) — Supp
First Nat. Bank of Birmingham, Ala. v. U.S., 358 F.2d 625 (5th Cir. 1966) — Supp
Land v. U.S., 429 F. Supp. 545 (W.D. La. 1977) — Supp
Smith, Estate of v. U.S., 300 F. Supp. 2d 474 (S.D. Tex. 2004) — Supp
Stoutz v. U.S., 324 F. Supp. 197 (E.D. La. 1970) — Supp
Trust Co. of Ga. v. Allen, 164 F.2d 438 (C.C.A. 5th Cir. 1947) — Supp
U.S. v. Land, 303 F.2d 170 (5th Cir. 1962) — Supp

Seventh Circuit

Bader v. U.S., 172 F. Supp. 833 (S.D. Ill. 1959) — Supp
Heffley v. C.I.R., 884 F.2d 279 (7th Cir. 1989) — Supp
Prussner v. U.S., 896 F.2d 218 (7th Cir. 1990) — Supp

Eighth Circuit

Brandeis v. U.S., 251 F.2d 719 (8th Cir. 1958) — Supp
Sachs, Estate of v. C.I.R., 856 F.2d 1158 (8th Cir. 1988) — Supp

Ninth Circuit

Clarke v. Welch, 7 F. Supp. 595 (S.D. Cal. 1933) — IV
Flanders v. U.S., 347 F. Supp. 95 (N.D. Cal. 1972) — Supp
Klosterman, Estate of v. C.I.R., 32 F.3d 402 (9th Cir. 1994) — Supp
Robinson v. U.S., 454 F. Supp. 1160 (N.D. Cal. 1978) — Supp
Simmie, Estate of v. C.I.R., 632 F.2d 93 (9th Cir. 1980) — Supp
Trust Services of America, Inc. v. U.S., 885 F.2d 561 (9th Cir. 1989) — Supp

Tenth Circuit

Hicks v. U.S., 335 F. Supp. 474 (D. Colo. 1971) — Supp
True, Estate of v. C.I.R., 390 F.3d 1210 (10th Cir. 2004) — Supp

Eleventh Circuit

Alston v. U.S., 228 F. Supp. 216 (N.D. Ga. 1964) — Supp

[Watts, Estate of v. C.I.R.](#), 823 F.2d 483 (11th Cir. 1987) — Supp

Specialized Courts

[Abruzzo v. U.S.](#), 21 Cl. Ct. 351, 1990 WL 128376 (1990) — Supp

[Righter v. U. S.](#), 194 Ct. Cl. 400, 439 F.2d 1204, 22 A.L.R. Fed. 1 (1971) — Supp

[Weld v. U.S.](#), 31 Fed. Cl. 81 (1994) — Supp

Arizona

[Hubbs, In re](#), 41 Ariz. 466, 19 P.2d 672 (1933) — I

Arkansas

[Moses v. McLeod](#), 207 Ark. 252, 180 S.W.2d 110 (1944) — III

California

[Miller, In re](#), 31 Cal. 2d 191, 187 P.2d 722 (1947) — Supp

[Riley v. Zellerbach](#), 53 Cal. App. 2d 196, 127 P.2d 597 (1st Dist. 1942) — I, V

[Rowell, In re Estate of](#), 132 Cal. App. 2d 421, 282 P.2d 163 (4th Dist. 1955) — Supp

[Slack's Estate, In re](#), 86 Cal. App. 2d 49, 194 P.2d 61 (1st Dist. 1948) — Supp

[Stevens' Estate, In re](#), 163 Cal. App. 2d 255, 329 P.2d 337 (2d Dist. 1958) — Supp

Colorado

[Burkhardt's Estate, In re](#), 32 Colo. App. 97, 511 P.2d 514 (App. 1973) — Supp

[Colman's Estate, In re](#), 191 Colo. 242, 552 P.2d 1 (1976) — Supp

Connecticut

[Newell v. McLaughlin](#), 126 Conn. 138, 9 A.2d 815 (1939) — I, II, III

[Watrous v. Connelly](#), 141 Conn. 257, 105 A.2d 654 (1954) — Supp

Florida

[Nebraska Methodist Hosp. v. Wilson](#), 523 So. 2d 1220 (Fla. 1st DCA 1988) — Supp

Idaho

[Schweitzer's Estate, In re](#), 81 Idaho 165, 338 P.2d 267 (1959) — Supp

Illinois

[Schwebel, Estate of v. State](#), 203 Ill. App. 3d 930, 148 Ill. Dec. 917, 561 N.E.2d 223 (5th Dist. 1990) — Supp

Indiana

[Sibbitt v. Indiana Dept. of Revenue](#), 563 N.E.2d 146 (Ind. Ct. App. 1990) — Supp

Iowa

[Haney v. Kitchen](#), 690 N.W.2d 675 (Iowa 2005) — Supp

[Millard's Estate, In re](#), 251 Iowa 1282, 105 N.W.2d 95 (1960) — Supp

[Wickham's Estate, In re](#), 241 Iowa 198, 40 N.W.2d 469 (1950) — Supp

Kentucky

[Commonwealth v. Wood's Ex'x](#), 297 Ky. 583, 180 S.W.2d 312 (1944) — I

Louisiana

[Kaufman, Succession of](#), 274 So. 2d 471 (La. Ct. App. 1st Cir. 1973) — Supp

[Stelly's Estate, In re](#), 185 So. 637 (La. Ct. App. 1st Cir. 1939) — I

Maine

[Stetson v. Johnson](#), 159 Me. 37, 187 A.2d 740 (1963) — Supp

[Tully, Estate of](#), 545 A.2d 1275 (Me. 1988) — Supp

Maryland

Pohlhaus v. Register of Wills for Baltimore City, 248 Md. 625, 238 A.2d 91 (1968) — Supp
Rosenburg v. Bouse, for Use of State, 172 Md. 530, 192 A. 323 (1937) — I, III
Shaughnessy v. Perlman, 198 Md. 619, 85 A.2d 38 (1951) — Supp

Massachusetts

Old Colony Trust Co. v. Commissioner of Corporations and Taxation, 346 Mass. 667, 195 N.E.2d 332, 13 A.L.R.3d 646 (1964) — Supp
Page v. Commissioner of Revenue, 389 Mass. 388, 450 N.E.2d 590, 36 U.C.C. Rep. Serv. 941 (1983) — Supp

Michigan

Clayton's Estate, In re, 343 Mich. 101, 72 N.W.2d 1 (1955) — Supp
Cress' Estate, In re, 335 Mich. 551, 56 N.W.2d 380, 36 A.L.R.2d 907 (1953) — Supp

Minnesota

Bigelow's Estate, In re, 199 Minn. 239, 271 N.W. 459 (1937) — I, III
Haugan's Estate v. Commissioner of Taxation, 275 Minn. 405, 147 N.W.2d 387 (1966) — Supp
State v. Wagner, 233 Minn. 241, 46 N.W.2d 676, 23 A.L.R.2d 762 (1951) — Supp

Missouri

Lamy, In re Estate of, 679 S.W.2d 288 (Mo. 1984) — Supp
Rosing's Estate, In re, 337 Mo. 544, 85 S.W.2d 495 (1935) — I

Montana

Burr v. Department of Revenue, 175 Mont. 473, 575 P.2d 45 (1978) — Supp
Power's Estate, In re, 156 Mont. 100, 476 P.2d 506 (1970) — Supp

Nebraska

Krotter's Estate, In re, 136 Neb. 783, 287 N.W. 613 (1939) — I

New Hampshire

Kimball v. Potter, 89 N.H. 234, 196 A. 272 (1938) — IV

New Jersey

Arkell's Estate, In re, 103 N.J. Super. 266, 247 A.2d 130 (App. Div. 1968) — Supp
Bose v. Division of Taxation, Dept. of Treasury, 5 N.J. Super. 266, 68 A.2d 841 (App. Div. 1949) — Supp
City Bank Farmers Trust Co. v. Martin, 126 N.J.L. 506, 20 A.2d 56 (N.J. Sup. Ct. 1941) — IV
Dommerich v. Kelly, 132 N.J. Eq. 220, 27 A.2d 871 (Prerog. Ct. 1942) — I, IV
Hartford's Estate, In re, 122 N.J. Eq. 489, 194 A. 800 (Prerog. Ct. 1937) — I, IV
Montclair Trust Co. v. Zink, 141 N.J. Eq. 401, 57 A.2d 372 (Prerog. Ct. 1948) — Supp
Nicholas v. Martin, 127 N.J.L. 35, 21 A.2d 323 (N.J. Sup. Ct. 1941) — I, IV
Renwick v. Martin, 126 N.J. Eq. 564, 10 A.2d 293 (Prerog. Ct. 1939) — IV
Rutgers v. Martin, 127 N.J.L. 603, 23 A.2d 406 (N.J. Ct. Err. & App. 1942) — IV
Schroeder v. Zink, 4 N.J. 1, 71 A.2d 321 (1950) — Supp
Turner v. Zink, 1 N.J. Super. 114, 61 A.2d 544 (App. Div. 1948) — Supp
Warshaw, Estate of v. Director, Division of Taxation, 27 N.J. Tax 287, 2013 WL 3212274 (Super. Ct. App. Div. 2013) — Supp
Warshaw, Estate of v. Director, Div. of Taxation, 26 N.J. Tax 358, 2012 WL 2515302 (2012) — Supp
Wimpfheimer's Estate, In re, 126 N.J.L. 502, 20 A.2d 433 (N.J. Sup. Ct. 1941) — I, IV

New York

Andrus' Will, In re, 169 Misc. 740, 8 N.Y.S.2d 736 (Sur. Ct. 1938) — III
Behm's Estate, In re, 35 Misc. 2d 630, 231 N.Y.S.2d 164 (Sur. Ct. 1962) — Supp

Bergen's Estate, In re, 157 Misc. 313, 283 N.Y.S. 549 (Sur. Ct. 1935) — V
Buell's Estate, In re, 198 Misc. 358, 66 N.Y.S.2d 180 (Sur. Ct. 1946) — Supp
Campanari's Estate, In re, 188 Misc. 666, 68 N.Y.S.2d 253 (Sur. Ct. 1947) — Supp
Champlin's Estate, In re, 58 N.Y.S.2d 545 (Sur. Ct. 1945) — Supp
Cutler's Estate, In re, 3 Misc. 2d 44, 154 N.Y.S.2d 292 (Sur. Ct. 1956) — Supp
Endemann's Estate, In re, 201 Misc. 1077, 106 N.Y.S.2d 849 (Sur. Ct. 1951) — Supp
Hanft's Estate, In re, 194 Misc. 91, 85 N.Y.S.2d 10 (Sur. Ct. 1948) — Supp
Levy's Estate, In re, 70 N.Y.S.2d 72 (Sur. Ct. 1947) — Supp
Luke's Estate, In re, 75 N.Y.S.2d 572 (Sur. Ct. 1947) — Supp
Man's Estate, In re, 181 Misc. 911, 46 N.Y.S.2d 938 (Sur. Ct. 1943) — III
Mancuso's Estate, In re, 170 Misc. 298, 10 N.Y.S.2d 459 (Sur. Ct. 1939) — V
McCaddin's Estate, In re, 148 Misc. 321, 265 N.Y.S. 666 (Sur. Ct. 1933) — I, III
Notman's Estate, In re, 2 Misc. 2d 465, 153 N.Y.S.2d 317 (Sur. Ct. 1956) — Supp
Starr's Estate, In re, 157 Misc. 103, 282 N.Y.S. 957 (Sur. Ct. 1935) — I
Wallin, Matter of Estate of, 168 Misc. 667, 6 N.Y.S.2d 476 (Sur. Ct. 1938) — III
Whiteman's Estate, In re, 114 N.Y.S.2d 633 (Sur. Ct. 1952) — Supp

Ohio

Cantor's Estate, In re, 31 Ohio Op. 2d 393, 94 Ohio L. Abs. 102, 200 N.E.2d 515 (Prob. Ct. 1963) — Supp
Hough's Estate, In re, 78 Ohio L. Abs. 238, 152 N.E.2d 561 (Prob. Ct. 1958) — Supp
Kaufman's Estate, In re, 53 Ohio St. 2d 231, 7 Ohio Op. 3d 397, 374 N.E.2d 142 (1978) — Supp

Oregon

First Nat. Bank of Oregon v. Department of Revenue, State of Or., 294 Or. 60, 653 P.2d 985 (1982) — Supp

Pennsylvania

Carver's Estate, In re, 422 Pa. 609, 222 A.2d 882 (1966) — Supp
Darsie's Estate, In re, 354 Pa. 540, 47 A.2d 815 (1946) — Supp
Leiper's Estate, In re, 40 Pa. D. & C. 633, 1941 WL 2879 (Orphans' Ct. 1941) — V
Miller, Estate of, 467 Pa. 193, 355 A.2d 577 (1976) — Supp
Morris' Estate, In re, 42 Pa. D. & C. 522, 1942 WL 2537 (Orphans' Ct. 1942) — V
Reynolds' Estate, In re, 359 Pa. 616, 60 A.2d 57 (1948) — Supp
Rowell's Estate, In re, 315 Pa. 181, 173 A. 634 (1934) — I

South Dakota

Jahn's Estate, In re, 65 S.D. 124, 271 N.W. 903 (1937) — I, III

Tennessee

Mercy v. Olsen, 672 S.W.2d 196 (Tenn. 1984) — Supp

Utah

State Tax Commission v. Backman, 88 Utah 424, 55 P.2d 171 (1936) — I

Washington

Bowers' Estate, In re, 196 Wash. 79, 81 P.2d 813 (1938) — I
Ferguson's Estate, In re, 113 Wash. 598, 194 P. 771, 13 A.L.R. 122 (1921) — III
Gufler's Estate, In re, 43 Wash. 2d 440, 261 P.2d 434 (1953) — Supp
Haury's Estate, In re, 188 Wash. 43, 61 P.2d 421 (1936) — III
Henry's Estate, Matter of, 88 Wash. 2d 745, 565 P.2d 1166 (1977) — Supp
Toomey's Estate, In re, 75 Wash. 2d 915, 454 P.2d 420 (1969) — Supp

Wisconsin

[Benjamin's Estate, In re](#), 235 Wis. 152, 292 N.W. 304 (1940) — I
[Latimer's Estate, In re](#), 271 Wis. 1, 72 N.W.2d 321 (1955) — Supp
[Marshall's Will, In re](#), 236 Wis. 132, 294 N.W. 527 (1940) — I
[Merrill's Will, In re](#), 212 Wis. 15, 248 N.W. 909 (1933) — I
[Mitchell's Estate, In re](#), 239 Wis. 498, 1 N.W.2d 149 (1941) — I, V
[Nieman's Estate, In re](#), 230 Wis. 23, 283 N.W. 452 (1939) — I

I. Generally; at death

The present annotation supplements those in [13 ALR 127](#) and [86 ALR 1030](#).

That generally the time as of which the value of property is to be determined for inheritance, estate, or succession tax purposes is the date of the death of the decedent is supported by the following more recent cases:

Arizona

[Re Hubbs](#) (1933) 41 Ariz 466, 19 P2d 672

California

[Riley v. Zellerbach](#) (1942) 53 CalApp2d 196, 127 P2d 597

Connecticut

[Newell v. McLaughlin](#) (1939) 126 Conn 138, 9 A2d 815

Kentucky

[Com. v. Wood](#) (1944) 297 Ky 583, 180 SW2d 312

Louisiana

[Re Stelly](#) (1939, La App) 185 So 637

Maryland

[Rosenburg v. Bouse](#) (1937) 172 Md 530, 192 A 323

Minnesota

[Re Bigelow](#) (1937) 199 Minn 239, 271 NW 459

Missouri

[Re Rosing](#) (1935) 337 Mo 544, 85 SW2d 495

Nebraska

[Re Krotter](#) (1939) 136 Neb 783, 287 NW 613

New Jersey

[Re Hartford](#) (1937) 122 NJ Eq 489, 194 A 800 (writ of certiorari dismissed in (1938) 120 NJL 564, 1 A2d 13, affirmed in (1939) 122 NJL 283, 4 A2d 31, 121 ALR 354)

[Re Wimpfheimer](#) (1941) 126 NJL 502, 20 A2d 433

[Nicholas v. Martin](#) (1941) 127 NJL 35, 21 A2d 323 (affirmed for reasons expressed in opinion below in [Rutgers v. Martin](#) (1942) 127 NJL 603, 23 A2d 406)

[Dommerich v. Kelly](#) (1942) 132 NJ Eq 220, 27 A2d 871

New York

[Re McCaddin](#) (1933) 148 Misc 321, 265 NYS 666 (stating that the tax law has fixed the date of the decedent's death as the date as of which the value of his estate is to be determined for purposes of inheritance or estate taxation)

Pennsylvania

[Rowell's Estate](#) (1934) 315 Pa 181, 173 A 634

South Dakota

[Re Jahn](#) (1937) 65 SD 124, 271 NW 903

Utah

[State Tax Commission v. Backman](#) (1936) 88 Utah 424, 55 P2d 171 (stating that inheritance tax was changed to estate tax in 1933 by statute expressly providing that value of estate is to be determined as of time of death of decedent)

Washington

[Re Bowers \(1938\) 196 Wash 79, 81 P2d 813](#)

Wisconsin

[Merrill's Will \(1933\) 212 Wis 15, 248 NW 909](#)

[Nieman's Estate \(1939\) 230 Wis 23, 283 NW 452](#)

[Benjamin's Estate \(1940\) 235 Wis 152, 292 NW 304](#)

[Marshall's Will \(1940\) 236 Wis 132, 294 NW 527](#)

[Mitchell's Estate \(1941\) 239 Wis 498, 1 NW2d 149](#)

And the court, in [Newell v. McLaughlin \(1939\) 126 Conn 138, 9 A2d 815](#), overruled the contention of the administrator with the will annexed that the state inheritance tax should be computed, instead of as of the date of the testator's death, on the value of the property at the time of distribution to the legatees.

In many jurisdictions, including the Federal government, the statute imposing the estate, inheritance, or succession tax, has expressly provided that the value of the gross estate shall be determined as of the date of the decedent's death.

The provision of state inheritance tax statutes that all taxes shall be due and payable at the death of the decedent was held to mean that the value of the decedent's estate shall be valued as of the date of his death, in [Newell v. McLaughlin \(Conn\) supra](#), and in [Re Rosing \(1935\) 337 Mo 544, 85 SW2d 495](#).

In respect to provisions of a state inheritance tax statute that all taxes shall take effect at and accrue upon the death of the decedent, and that the property shall be appraised at its full and true value immediately upon the death of the decedent, or as soon thereafter as may be practicable, the court, in [Re Hubbs \(1933\) 41 Ariz 466, 19 P2d 672](#), in the case of a taxable transfer intended to take effect in possession or enjoyment after the death of the grantor, said that while neither of such provisions stated in haec verba as of what date the value shall be fixed, their plain import was that it shall be fixed as of the date of the death of the grantor, and not as of the date of the transfer.

And, while the provision in a state inheritance tax statute that "the words 'true and full value in money' and the word 'value,' ... shall be construed to mean the usual cash selling price at the place where the property to which the term is applied shall be at the time of determining its value," lent support, when viewed in the light of its immediate context, to the contention that the time as of which the value of an estate is to be determined is the date of the appraisal, the statute construed in its entirety indicated an intention that the value of the property at the time of the decedent's death be used as the basis upon which to compute the inheritance tax, according to the court in [Re Jahn \(1937\) 65 SD 124, 271 NW 903](#).

In computing the basis for apportionment of Federal and state taxes on the estate of a testator, it was held in [Re Starr \(1935\) 157 Misc 103, 282 NYS 957](#), that the audited values of the property as of the death of the testator were to be taken.

And where a will provided that certain legacies were to be payable only in the event the estate was sufficient to establish a trust provided for in a prior clause, and the value of the estate as of the date of the death of the testator was sufficient, but, as of the subsequent date of the establishment of the trust, was insufficient, it was held in [Re McCaddin \(1933\) 148 Misc 321, 265 NYS 666](#), that the value as of the date of the testator's death controlled for inheritance tax purposes.

II. One year after death

It has sometimes been expressly provided by statute, in some jurisdictions, that the estate of a decedent may be valued, for the purpose of computing the estate, inheritance, or succession tax, as of the date one year after his death.

Thus, as to the Federal estate tax, it is provided, with respect to the estates of decedents dying after August 30, 1935, in [§ 811\(j\) of the Internal Revenue Code \(26 U.S.C.A. 1940 ed § 811 \(j\), 6 FCA title 26, § 811\(j\) unchanged since\)](#) that "if the executor so elects ... , the value of the gross estate shall be determined by valuing all the property ... as of the date one year after the decedent's death, except that (1) property ... , within one year after the decedent's death, distributed by the executor ... , or sold, exchanged, or otherwise disposed of, shall be included at its value as of the time of such distribution, sale, exchange, or other

disposition, whichever first occurs, instead of its value as of the date one year after the decedent's death, and (2) any interest or estate which is affected by mere lapse of time shall be included at its value as of the time of death (instead of the later date) with adjustment for any difference in its value as of the later date not due to mere lapse of time."

The purpose of such provision, as stated in [Saks v. Higgins \(1939, DC\) 29 F Supp 996](#) (affirmed on another point in [\(1940; CCA2d\) 111 F2d 78](#), reversed on another point in [Maass v. Higgins \(1941\) 312 US 443, 85 L ed 940, 61 S Ct 631, 132 ALR 1035](#)), was to afford estates some relief from the hardships that might be imposed upon them if the estate tax had to be computed exclusively upon the basis of high values existing only on the date of the decedent's death, where an executor took office in a time of rapidly falling markets so that the estate soon diminished to an amount barely sufficient to pay the tax.

In a few states, it was stated in [Newell v. McLaughlin \(1939\) 126 Conn 138, 9 A2d 815](#), the tax statute provides that the value shall be determined as of the date of the expiration of one year after the decedent's death, or, if property is distributed earlier, as of the date of distribution.

III. Appreciation or depreciation after death

That any appreciation or depreciation in the value of the estate property after the decedent's death is not to be taken into account in valuing his estate for estate, inheritance, or succession tax purposes, finds support in the following additional decisions: [Camp v. United States \(1930, CCA 4th\) 44 F2d 126](#); [Mullikin v. Magruder \(1944, DC\) 55 F Supp 895](#) (affirmed in [\(1945, CCA 4th\) 149 F2d 593](#)); [Re Bigelow \(1937\) 199 Minn 239, 271 NW 459](#); [Re McCaddin \(1933\) 148 Misc 321, 265 NYS 666](#); [Re Wallin \(1938\) 168 Misc 667, 6 NYS2d 476](#); [Re Andrus \(1938\) 169 Misc 740, 8 NYS2d 736](#); [Re Man \(1943\) 181 Misc 911, 46 NYS2d 938](#); [Re Jahn \(1937\) 65 SD 124, 271 NW 903](#).

It was held in [Mullikin v. Magruder \(1944, DC\) 55 F Supp 895](#) (affirmed in [\(1945, CCA 4th\) 149 F2d 593](#)), that the amount realized by the executors on notes, assets of the estate, worthless at the time of the decedent's death, by their compromise settlement, several years thereafter, by the payment of a small part of the principal of the notes by their maker, who, by his subsequent improved financial condition, was enabled to borrow the money to make such payment, was not to be taken into account in computing the value of the estate for Federal estate tax purposes.

But it was held in [Caskey v. State \(NH\) \(reported herewith\) ante, 1054](#), that the loss on the sale of assets of the estate in order to pay debts, legacies, and administration expenses was to be taken into account in computing the value of the estate for the purpose of assessing the inheritance tax on the residuum.

And, following [Re Ferguson \(1921\) 113 Wash 598, 194 P 771, 13 ALR 122](#), the case reported with the earlier annotation in [13 ALR 127](#), it was held in [Re Haury \(1936\) 188 Wash 43, 61 P2d 421](#), that the price paid for the testator's real property, which was practically his entire estate, on its sale to pay debts, taxes, and expenses of administration, was its value for inheritance tax purposes, and that the tax was not to be computed on its much greater value appraised as of the date of the testator's death.

At times, it has been expressly provided by statute in some states that any increase in value of the estate subsequent to the date of the death of the decedent shall not be subject to the inheritance, estate, or succession tax.

But it has also been provided by statute in some states that the subsequent increase or decrease in value of property shall be considered in valuing it for such tax purposes.

And it was held, under such a statute, in [Rosenburg v. Bouse \(1937\) 172 Md 530, 192 A 323](#), that the inheritance tax was imposed upon the increase of the appraised value at the time of distribution, where the statute at that time so provided, although at the time of the decedent's death the statute exempted such an increase from tax.

It was held, however, under such a statute, in [Newell v. McLaughlin \(1939\) 126 Conn 138, 9 A2d 815](#), that a decrease in value of choses in action owned by the decedent, which were retained in the estate unsold and distributed in kind to the beneficiaries,

could not be taken into account in valuing the property so as to authorize the computation of the inheritance tax on such property on its value at the time of distribution instead of as of the date of the decedent's death, where the statute provided for the deduction, in appraising the value of the estate, of losses incurred during its settlement in reducing choses in action to possession.

Apparently, disregard of appreciation or depreciation of the decedent's property after his death in valuing it for inheritance, estate, or succession tax purposes would not be the rule, however, in those jurisdictions whose statutes provide for valuation as of a date subsequent to the decedent's death, stated or referred to supra, II (see [Clark v. United States](#) (1940, DC) 33 F Supp 216, and [Moses v. McLeod](#) (1944) 207 Ark 252, 180 SW2d 110), but the United States Supreme Court has held in [Maass v. Higgins](#) (1941) 312 US 443, 85 L ed 940, 61 S Ct 631, 132 ALR 1035, under a provision of a revenue act, subsequently embodied in § 811(j) of the Internal Revenue Code, 26 U.S.C.A. 1940 ed § 811(j), 6 FCA title 26, § 811(j), previously set out supra, II, that the income of the property from the time of the decedent's death to the time of the subsequent valuation is not a part of its value as of such valuation date. See generally, for the construction and application of such provision, the annotation in [132 ALR 1039](#).

IV. Inter vivos transfers

That inter vivos transfers made in contemplation of death were to be valued, for inheritance tax purposes, as of the date of the transferor's death and not as of the date of transfer, was held in [City Bank Farmers Trust Co. v. Martin](#) (1941) 126 NJL 506, 20 A2d 56; in [Nicholas v. Martin](#) (1941) 127 NJL 35, 21 A2d 323 (affirmed for reasons expressed in opinion below in [Rutgers v. Martin](#) (1942) 127 NJL 603, 23 A2d 406); and in [Dommerich v. Kelly](#) (1942) 132 NJ Eq 220, 27 A2d 871. The court said in the Dommerich Case (NJ) supra, that the court of errors and appeals in the Nicholas Case (NJ) supra, overruling [Renwick v. Martin](#) (1939) 126 NJ Eq 564, 10 A2d 293, *infra*, sanctioned the foregoing rule first enunciated by the supreme court in [Re Wimpfheimer](#) (1941) 126 NJL 502, 20 A2d 433.

[Renwick v. Martin](#) (1939) 126 NJ Eq 564, 10 A2d 293, holding that in the case of an inter vivos transfer made in contemplation of death but not intended to take effect at or after the transferor's death, the valuation of the transferred property is computed, for inheritance tax purposes, as of the date of the transfer and not as of the date of the transferor's death, was overruled in [Nicholas v. Martin](#) (1941) 127 NJL 35, 21 A2d 323, *supra*.

In computing the transfer inheritance tax in the case of inter vivos transfers intended to take effect at or after death, the property transferred is to be valued as of the date of the death of the transferor; and this is so even if the transfers are also made in contemplation of death. [Re Hartford](#) (1937) 122 NJ Eq 489, 194 A 800 (writ of certiorari dismissed on other points in (1938) 120 NJL 564, 1 A2d 13, affirmed in (1939) 122 NJL 283, 4 A2d 31, 121 ALR 354).

In [Kimball v. Potter](#) (1938) 89 NH 234, 196 A 272, where the decedent transferred property in his lifetime by an irrevocable trust, by the terms of which he was to have the income and also the principal so far as needed to take care of him during life, the trust to end at his death and the trust property to go then to his nephews, it was held that the value of the trust property at the date of the decedent's death, whether then more or less than at the time of the transfer in trust, was the amount subject to inheritance tax.

That the properties of joint tenancies existing between a husband and wife during his lifetime should be valued for Federal estate tax purposes as of the date of his death, and not as of the time of transfer of the respective properties by acts of parties, was held in [Clarke v. Welch](#) (1938, DC) 7 F Supp 595.

And that a gift inter vivos, subject to a succession tax, was to be valued not as of the date of the transfer, but as of the date of the death of the transferor, was held in [Atty.-Gen. v. National Trust Co.](#) [1931] AC (Eng) 818, [1931] 3 DLR 689, and in [Atty.-Gen. v. Pearce](#) (1931) 25 Alberta LR 553 (1932) 1 DLR 587.

V. Future estates

(Supplementing annotation in [86 ALR 1030](#).)

The value of the remainder after a life estate to the testator's widow given a wholly absolute and uncontrolled discretion to consume the entire principal of the estate was held in *Re Bergen* (1935) 157 Misc 313, 283 NYS 549, to be determinable as of the date of the death of the widow, and not as of the date of the death of the testator, it being provided in the tax law that estates in expectancy which are contingent or defeasible shall be appraised at their full value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof.

Under a provision of an inheritance tax act that the tax on a devise, descent, or bequest to take effect in possession after the expiration of a life estate shall be assessed upon the value of the property at the time the right of possession accrues to the beneficiary, the value of property given by will by a testatrix to her granddaughter for life, with power of appointment by will as to the remainder, which is exercised, is to be computed as of the date of the death of the granddaughter, and not as of the date of the death of the grandmother. *Morris's Estate* (1941) 42 Pa D & C 522.

And where a testatrix willed her homestead to relatives to occupy it as their homestead so long as they wished, and to the city for park purposes upon its abandonment by such relatives, and, on the inheritance tax proceedings, no tax was assessed upon the interest of the city, because exempt, and thereafter upon the abandonment of the homestead by such relatives, the city declined to accept the devise to it, and the property passed under the residuary clause, it was held in *Mitchell's Estate* (1941) 239 Wis 498, 1 NW2d 149, that the contingent interest of the residuary beneficiary in such property was to be valued, for inheritance tax purposes, not as of the date of the death of the testatrix, but as of the date of the happening of the contingency, under the provision of the tax statute that estates in expectancy which are contingent, and in which proceedings for the determination of the tax have not been taken, shall be appraised at their full value when the person entitled thereto shall come into the beneficial enjoyment or possession thereof.

But in *Re Mancuso* (1939) 170 Misc 298, 10 NYS2d 459, where the will gave the husband of the testatrix a life estate in all her real and personal property with the right to use any or all of it, if necessary, for his support, and the remainder was given to the decedent's daughter, the court seemed to be of the opinion that the value of the remainder, for estate tax purposes, was to be determined as of the time of the death of the testatrix.

In the case of the creation of a trust reserving to the trustor the life income and providing for a vested remainder over of the corpus on his death, it was held in *Riley v. Jellerbach* (1942) 53 CalApp2d 196, 127 P2d 597, that the time as of which the value of the remainder should be computed, for inheritance tax purposes, was the date of the death of the trustor, and not the date of the creation of the trust.

And under the provision of a state inheritance tax statute, permitting a remainderman to pay the tax before he comes into possession of the remainder, that in such case, the tax shall be assessed upon the value of the remainder at the time of such payment of the tax, after deducting the value of the life estate, the value of the life estate is to be computed as of the date of the death of the decedent, and not as of the date of the payment of the tax on the remainder. *Leiper's Estate* (1941) 40 Pa D & C 633.

CUMULATIVE SUPPLEMENT

In valuing closely held stock for estate tax purposes, valuations accepted by the Internal Revenue Service in other estates involving the same stock and close in time to the date of death in question, though not controlling, would be considered, particularly with respect to those estates in which investigations were made. *Righter v. U. S.*, 194 Ct. Cl. 400, 439 F.2d 1204, 71-1 U.S. Tax Cas. (CCH) P 12758, 27 A.F.T.R.2d 71-1691, 22 A.L.R. Fed. 1 (1971).

Congress intended, by enacting statutes providing that basis of property in hands of a person acquiring property from a decedent is the fair market value of the property at the date of decedent death and that value of property included in the gross estate is its fair market value at time of death, that unrealized gain taxed to the decedent estate at his death should not be subjected to another tax when it was subsequently realized by the estate or a legatee. 26 U.S.C.A. (I.R.C.1954) §§ 1014(a), 2031. *Levin v. U.S.*, 373 F.2d 434, 67-1 U.S. Tax Cas. (CCH) P 9196, 19 A.F.T.R.2d 573 (1st Cir. 1967).

Though retail sales price of a property unit may be an important factor in the determination of its fair market value for estate tax purposes, other factors may cause the retail price to be an unreasonable or unrealistic value standard, and such price is not always followed. [Cartwright v. U.S.](#), 457 F.2d 567, 72-1 U.S. Tax Cas. (CCH) P 12836, 29 A.F.T.R.2d 72-1527 (2d Cir. 1972).

The treasury regulation that appraisal for federal estate tax purposes of the value of the property at the date of decedent death shall be deemed to be its fair market value at the time of acquisition, means that the figure arrived at by such an evaluation is only prima facie correct and may be shown to be erroneous. 26 U.S.C.A. (I.R.C.1954) § 1014. [McEwan v. C.I.R.](#), 241 F.2d 887, 57-1 U.S. Tax Cas. (CCH) P 9475, 50 A.F.T.R. (P-H) P 1757 (2d Cir. 1957).

The estate tax is not based on value of reversionary interest of decedent at time of his death, but on the value at time of his death of the property to which the reversionary interest relates. 26 U.S.C.A. (I.R.C.1939) § 811(c). [Dominick's Estate v. C.I.R.](#), 152 F.2d 843, 46-1 U.S. Tax Cas. (CCH) P 10247, 34 A.F.T.R. (P-H) P 658 (C.C.A. 2d Cir. 1946).

In determining value of unlisted stock and securities for estate tax purposes, court cannot change rule of valuation in defiance of statute and regulations merely because the incidence of the tax occurs at a period when the statutory method is relatively more favorable to the taxpayer. 26 U.S.C.A. (I.R.C. 1939) § 811(k). [Goss v. Fitzpatrick](#), 97 F. Supp. 765, 51-1 U.S. Tax Cas. (CCH) P 10806, 40 A.F.T.R. (P-H) P 885 (D. Conn. 1951).

Nature of interest in property passing to surviving spouse and valuation of that interest are to be determined as of the time of decedent death. 26 U.S.C.A. (I.R.C.1954) § 2056. [Provident Nat. Bank v. U.S.](#), 581 F.2d 1081, 78-2 U.S. Tax Cas. (CCH) P 13255, 42 A.F.T.R.2d 78-6458 (3d Cir. 1978).

Under federal estate tax, value of interest which ceased by reason of death, not value of that received by recipient is the value subject to federal estate tax. 26 U.S.C.A. (I.R.C.1939) §§ 810, 811(a). [Goodman v. Granger](#), 243 F.2d 264, 57-1 U.S. Tax Cas. (CCH) P 11687, 51 A.F.T.R. (P-H) P 67 (3d Cir. 1957).

In determining fair market value on date of decedent death of large block of corporate stock owned by decedent for estate tax purposes, fact that large blocks of stock under certain circumstances require a margin for redistribution may be deemed to affect fair market value of the stock. Revenue Act 1926, § 302(a) and § 1108(a) as amended by Revenue Act 1934, § 506, 26 U.S.C.A. (I.R.C.1939) § 811(a) and § 3791. [C.I.R. v. Stewart's Estate](#), 153 F.2d 17, 46-1 U.S. Tax Cas. (CCH) P 10248, 34 A.F.T.R. (P-H) P 820 (C.C.A. 3d Cir. 1946).

Under Internal Revenue Code provision granting estates an option to have estate assets valued as of date one year after death, once an election is properly made, election cannot be revoked after expiration of time for filing return; and all assets of estate must be valued as of optional valuation date, and estates are not given option to pick and choose one date or another for each asset individually. 26 U.S.C.A. (I.R.C.1939) § 811(j). [Rosenfield v. U.S.](#), 156 F. Supp. 780, 58-1 U.S. Tax Cas. (CCH) P 11739, 1 A.F.T.R.2d 2049 (E.D. Pa. 1957).

A value can be placed upon rights for estate tax purposes even though there is some uncertainty as to the amount, if any, which will be received under the terms of the rights. [Duffield v. U.S.](#), 136 F. Supp. 944, 56-1 U.S. Tax Cas. (CCH) P 11583, 48 A.F.T.R. (P-H) P 1113 (E.D. Pa. 1955).

Real property jointly held by decedent was includable in his gross estate at its fair market value on date of his death. 26 U.S.C.A. (I.R.C.1954) § 2040. [Spaeder v. U.S.](#), 478 F. Supp. 73, 42 A.F.T.R.2d 78-6477 (W.D. Pa. 1978).

The estate tax is not based on the value of the reversionary interest of the decedent at the time of his death but on the value at the time of his death of the property to which that reversionary interest relates. 26 U.S.C.A. (I.R.C.1939) § 811(a)(2). [Tarver's Estate v. C.I.R.](#), 255 F.2d 913, 58-2 U.S. Tax Cas. (CCH) P 11805, 1 A.F.T.R.2d 2174 (4th Cir. 1958).

Federal estate tax is an excise tax on transfer of property at death, and, thus, valuation of property is to be made at moment of death and must be measured by interest that passes, in contrast with interest held by decedent before death or interest held by legatee after death. 26 U.S.C.A. § 2033. *Estate of Bonner v. U.S.*, 84 F.3d 196, 96-2 U.S. Tax Cas. (CCH) P 60237, 77 A.F.T.R.2d 96-2369 (5th Cir. 1996).

Testimony of Internal Revenue Commissioner expert sustained finding of valuation of \$336 per acre for land in decedent estate, for federal estate tax purposes, as against contention that expert improperly considered factors which were subsequent to death and not foreseeable; record showed that expert appraisal was objectively made using comparable sales with adjustments for size and condition of property at time of death. *Brown's Estate v. C. I. R.*, 425 F.2d 1406, 70-1 U.S. Tax Cas. (CCH) P 12683, 25 A.F.T.R.2d 70-1610 (5th Cir. 1970).

Critical time for determining decedent estate for estate tax purposes is at the moment of his death. 26 U.S.C.A. (I.R.C.1954) § 2033. *First Nat. Bank of Birmingham, Ala. v. U.S.*, 358 F.2d 625, 66-1 U.S. Tax Cas. (CCH) P 12399, 17 A.F.T.R.2d 1397 (5th Cir. 1966).

Valuation of estate for estate tax purposes should be made at time of transfer which is time of death. 26 U.S.C.A. (I.R.C.1954) § 2033. *U.S. v. Land*, 303 F.2d 170, 62-1 U.S. Tax Cas. (CCH) P 12078, 9 A.F.T.R.2d 1955 (5th Cir. 1962).

The failure of taxpayer in making claim for refund of estate tax to request that estate be valued as of one year after decedent death, rather than as of date of death, precluded taxpayer, in action to recover taxes paid, from having estate valued as of one year after decedent death merely because of a substantial decline within the year of value of property. Revenue Act 1926, Sec. 302(j), as amended, 26 U.S.C.A.Int.Rev.Code, 811(j). *Trust Co. of Ga. v. Allen*, 164 F.2d 438, 47-2 U.S. Tax Cas. (CCH) P 10582, 36 A.F.T.R. (P-H) P 413 (C.C.A. 5th Cir. 1947).

Since method of administration of succession chosen by heirs under Louisiana law removed assets from decedent estate, entry by probate court of judgment of possession which accompanied that removal set the alternate valuation date, and removal of assets from estate by means of Louisiana judgment of possession constituted a distribution or other disposal of such assets within meaning of Internal Revenue Code, so that stock included in decedent estate should be valued as of February 23, 1965, the date of judgment of possession, rather than as of January 15, 1966, which was one year subsequent to decedent death. 26 U.S.C.A. (I.R.C.1954) §§ 2031, 2032. *Stoutz v. U.S.*, 324 F. Supp. 197, 70-2 U.S. Tax Cas. (CCH) P 12722, 27 A.F.T.R.2d 71-1637 (E.D. La. 1970).

Where surviving spouse and heirs of intestate decedent elected to take immediate possession of their inheritance rather than qualify executor and have him administer successions effects, alternate valuation date on stock inherited from decedent was date of entry of final judgment of possession. 28 U.S.C.A. § 1346(a)(1); 26 U.S.C.A. (I.R.C.1954) §§ 2031, 2032, 2032(a), 2035 "2038, 2041; LSA"C.C. arts. 490 et seq., 533 et seq., 949 et seq.; LSA"C.C.P. art. 3031. *Land v. U.S.*, 429 F. Supp. 545, 77-1 U.S. Tax Cas. (CCH) P 13186, 39 A.F.T.R.2d 77-1650 (W.D. La. 1977).

Fair market value is standard for determining value of property for federal estate tax purposes. 26 U.S.C.A. § 2031. *Estate of Smith v. U.S.*, 300 F. Supp. 2d 474, 32 Employee Benefits Cas. (BNA) 1218, 93 A.F.T.R.2d 2004-556 (S.D. Tex. 2004), judgment aff'd, 391 F.3d 621, 33 Employee Benefits Cas. (BNA) 2931, 94 A.F.T.R.2d 2004-6891 (5th Cir. 2004).

Federal estate tax is not a tax on property beneficiary receives; rather, it is a tax imposed on transfer of property for reason of death, and is measured by what decedent relinquished or transferred in possession or enjoyment as of date of death, and not according to subsequent events. *Babb v. U.S.*, 349 F. Supp. 792, 72-2 U.S. Tax Cas. (CCH) P 12896, 30 A.F.T.R.2d 72-5909 (S.D. Tex. 1972).

Statutory requirement of substantial compliance with Treasury regulations with respect to heirselection for estate tax purposes to value assets of family farm or other family business in their current use, rather than their commercially most lucrative use,

is not satisfied by filing recapture agreement signed by one contingent remainderman, with main beneficiaries being left off. 26 U.S.C.A. § 2032A(d)(3)(B). *Prussner v. U.S.*, 896 F.2d 218, 90-1 U.S. Tax Cas. (CCH) P 60007, 65 A.F.T.R.2d 90-1222 (7th Cir. 1990).

Qualified use requirement for special use valuation of mother farm for estate tax purposes was not fulfilled through crop years when the farm, which mother had conveyed to son as trustee, was operated under mother cash rental lease with her husband brother. 26 U.S.C.A. §§ 2032A, 2032A(a)(1), (b)(1)(C), (b)(1)(C)(i, ii), (b)(2), (e)(2). *Heffley v. C.I.R.*, 884 F.2d 279, 89-2 U.S. Tax Cas. (CCH) P 13812, 64 A.F.T.R.2d 89-5909 (7th Cir. 1989).

Fair market value of stock for estate tax purposes is the price at which the stock would change hands between a willing buyer and a willing seller, neither of whom is under any compulsion to buy or sell and both of whom are reasonably well informed as to the facts having a bearing on value. *Bader v. U.S.*, 172 F. Supp. 833, 59-1 U.S. Tax Cas. (CCH) P 9431, 59-1 U.S. Tax Cas. (CCH) P 11865, 3 A.F.T.R.2d 1824 (S.D. Ill. 1959).

Date of death valuation principle adopted in Ithaca Trust is not universally applicable to other tax contexts. 26 U.S.C.A. §§ 2053, 2053(a)(3); Tax Reform Act of 1984, §§ 1026, 1026(a), 98 Stat. 494. *Estate of Sachs v. C.I.R.*, 856 F.2d 1158, 88-2 U.S. Tax Cas. (CCH) P 13781, 62 A.F.T.R.2d 88-6000 (8th Cir. 1988).

Words the time of such acquisition as used in statute providing that basis of property acquired by inheritance shall be fair market value of such property at the time of such acquisition are equivalent to words the date of the decedent death as used in the Internal Revenue Code of 1954. 26 U.S.C.A. (I.R.C.1939) § 113(a)(5); 26 U.S.C.A. (I.R.C.1954) § 1014. *Brandeis v. U.S.*, 251 F.2d 719, 58-1 U.S. Tax Cas. (CCH) P 9215, 1 A.F.T.R.2d 681 (8th Cir. 1958).

Irrigation assessments paid by landlords and collected from tenant farmersrent were included in gross cash rental, in valuing farmland for estate tax purposes by dividing excess of average annual gross cash rental received for comparable land over state and local real estate taxes imposed upon such land by applicable Federal Land Bank interest rate. 26 U.S.C.A. § 2032A(e)(7) (A). *Estate of Klosterman v. C.I.R.*, 32 F.3d 402, 94-2 U.S. Tax Cas. (CCH) P 60172, 74 A.F.T.R.2d 94-7453 (9th Cir. 1994).

Subsequent events are not considered to fix fair market value of estate assets for tax purposes, except to the extent that they were reasonably foreseeable at the date of valuation. *Trust Services of America, Inc. v. U.S.*, 885 F.2d 561, 89-2 U.S. Tax Cas. (CCH) P 13815, 64 A.F.T.R.2d 89-5920 (9th Cir. 1989).

For purpose of ascertaining decedent gross estate, value of life estate owned by decedent was properly fixed by utilizing valuation tables in existence at date life estate was received by decedent rather than on basis of valuation tables in effect at date of decedent death. *Estate of Simmie v. C.I.R.*, 632 F.2d 93, 80-2 U.S. Tax Cas. (CCH) P 13377, 47 A.F.T.R.2d 81-1574 (9th Cir. 1980).

Words regulations prescribed by the Secretary or his delegate, within provision of Internal Revenue Code that value of a reversionary interest immediately before death of decedent shall be determined by usual methods of valuation under regulations prescribed by Secretary or his delegate, include those in treasury regulations and mortality tables referenced therein. 26 U.S.C.A. (I.R.C.1954) §§ 2037, 2037(b)(2). *Robinson v. U.S.*, 454 F. Supp. 1160, 78-2 U.S. Tax Cas. (CCH) P 13254, 42 A.F.T.R.2d 78-6434 (N.D. Cal. 1978).

Criteria for valuing property included in gross estate is either fair market value at moment of death or fair market value upon alternate valuation date. 26 U.S.C.A. (I.R.C.1954) §§ 2031, 2032. *Flanders v. U.S.*, 347 F. Supp. 95, 72-2 U.S. Tax Cas. (CCH) P 12881, 30 A.F.T.R.2d 72-5872 (N.D. Cal. 1972).

Stated price in buy-sell agreement will control valuation of property in decedent's gross estate, for estate tax purposes, where (1) price is determinable from agreement, (2) terms of agreement are binding throughout life and death, (3) agreement is legally

binding and enforceable, and (4) agreement was entered into for bona fide business reasons and is not testamentary substitute intended to pass on decedent's interests for less than full and adequate consideration. [26 U.S.C.A. § 2031\(a\)](#); [26 C.F.R. § 20.2031-2\(h\)](#). [Estate of True v. C.I.R.](#), 390 F.3d 1210 (10th Cir. 2004).

Though taxpayer did not meet her burden of proving that Commissioner valuation for estate tax purposes of stock of closely held corporation was wrong, court would, in the interest of fairness, find value to be that testified to in refund suit by witnesses for the United States rather than the higher value previously determined by the Commissioner. [Hicks v. U.S.](#), 335 F. Supp. 474, 72-1 U.S. Tax Cas. (CCH) P 12829, 29 A.F.T.R.2d 72-1508 (D. Colo. 1971).

For purpose of determining applicable estate tax, value of decedent interest in lumber company could not be ascertained by reference to value of that interest upon lumber company liquidation, where lumber company partnership agreement clearly provided that death of partner would not cause dissolution, and that business would continue upon death of partner, which was in accordance with version of Uniform Partnership Act adopted in Oregon. ORS 68.590, 68.600. [Estate of Watts v. C.I.R.](#), 823 F.2d 483, 87-2 U.S. Tax Cas. (CCH) P 13726, 60 A.F.T.R.2d 87-6117 (11th Cir. 1987).

For estate tax purposes, value of estate is fixed as date of death and income subsequently received, which is properly included in income tax returns by executors, does not change value of estate as of date of death. [Alston v. U.S.](#), 228 F. Supp. 216, 64-1 U.S. Tax Cas. (CCH) P 12217, 13 A.F.T.R.2d 1856 (N.D. Ga. 1964).

Crucial time for assessing valuation of decedents United States Treasury Bonds known as flower bonds for estate tax purposes was time of death, not any time subsequent thereto. [26 U.S.C.A. § 2031\(a\)](#). [Weld v. U.S.](#), 31 Fed. Cl. 81, 94-1 U.S. Tax Cas. (CCH) P 60164, 73 A.F.T.R.2d 94-2368 (1994).

Generally, postdeath sales of property are not relevant to determination of property fair market value at date of death, for estate tax purposes. [Abruzzo v. U.S.](#), 21 Cl.Ct. 351.

Death is the generating source for operation of the inheritance tax, consistent with the theory that such tax is imposed on the right to receive a decedent property. [In re Miller](#), 31 Cal. 2d 191, 187 P.2d 722 (1947).

Adequacy of consideration for inter vivos transfer is to be determined, for inheritance tax purposes, as of date of transfer rather than as of date of transferor death. [In re Stevens' Estate](#), 163 Cal. App. 2d 255, 329 P.2d 337 (2d Dist. 1958).

Basic question for determination in any contest over inheritance tax appraisal of corporate stock is fair market value of stock on date of transferor death. [Revenue and Taxation Code, § 13951](#). [In re Estate of Rowell](#), 132 Cal. App. 2d 421, 282 P.2d 163 (4th Dist. 1955).

The value of securities of decedent estate is their value at time of his death, and any subsequent appreciation or depreciation in value thereof is immaterial in computing value of estate for inheritance tax purposes. [Revenue and Taxation Code § 13981](#). [In re Slack's Estate](#), 86 Cal. App. 2d 49, 194 P.2d 61 (1st Dist. 1948).

An inheritance tax is a succession tax, and is distinguished from intestate tax, and thus is not imposed on property as such but upon transferee privilege of receiving property and is accordingly levied at time transferee attains either use or beneficial enjoyment of property. [In re Colman's Estate](#), 191 Colo. 242, 552 P.2d 1 (1976).

Executor, who, in order to receive statutory five percent discount on inheritance tax due, made a payment on tax within six months after decedent death, and who, approximately 13 months after death, filed a supplemental application wherein he elected to be taxed upon values of property one year after date of death, exercised his right to have assets of estate valued one year after date of death, and therefore he was bound by assessment made on optional valuation which resulted in addition back of

the five percent discount. 1965 Perm.Supp., C.R.S., 138"3"33; C.R.S. 3, 138"3"33, 138"3"67, 138"3"67(4). [In re Burkhardt's Estate](#), 32 Colo. App. 97, 511 P.2d 514 (1973).

In the computation of the Connecticut succession tax, value of estate of deceased is fixed as of date of death of deceased. Gen.St.1949, §§ 2021, 2026, 2027(a), 2029, 2030, 2031, 2031(a). [Watrous v. Connelly](#), 141 Conn. 257, 105 A.2d 654, 46 A.F.T.R. (P-H) P 429 (1954).

In absence of contrary provision in will, date personal representative directed broker to transfer stock was to be considered date of distribution for purpose of determining value of estate assets in order to satisfy or partially satisfy testamentary devise, not their value as of date of their actual transfer on books of applicable corporation. [Nebraska Methodist Hosp. v. Wilson](#), 523 So. 2d 1220 (Fla. Dist. Ct. App. 1st Dist. 1988).

Upon death of testator whose olographic will provided for conversion of holdings to cash, for payment to brother of \$200 per month from estate, and for payment of balance at death of brother to crippled children hospitals, life estate to brother and remainder to hospitals were immediately to be appraised, market value thereof determined, and transfer tax fixed and assessed. I.C. § 14"412. [In re Schweitzer's Estate](#), 81 Idaho 165, 338 P.2d 267 (1959).

Value of decedent estate, for inheritance tax purposes, is determined as of date of death; diminution in market value after decedent death is not allowed as expense of administration. [Estate of Schwebel v. State](#), 203 Ill. App. 3d 930, 148 Ill. Dec. 917, 561 N.E.2d 223 (5th Dist. 1990).

Date of decedent death is appraisal date for determining fair market value of property interest transferred by a decedent if no federal estate tax return is filed. West A.I.C. 6 "4.1 "5 "1.5. [Sibbitt v. Indiana Dept. of Revenue](#), 563 N.E.2d 146 (Ind. Ct. App. 1st Dist. 1990).

An inheritance tax is not a tax upon the estate of a decedent or upon property thereof but is a tax upon the right of succession and is chargeable upon property each beneficiary receives. [Haney v. Kitchen](#), 690 N.W.2d 675 (Iowa 2005).

Where payment of inheritance taxes due with respect to remainder interests was deferred until termination of life estate, value of estate property for purposes of such tax liability was determined by appraisal at life tenant death rather than by appraisal at testator death. I.C.A. §§ 4501.1 et seq., 450.2, 450.6, 450.10, subd. 3, 450.51, 450.52. [In re Millard's Estate](#), 251 Iowa 1282, 105 N.W.2d 95 (1960).

Where payment of inheritance tax on remainder interest in real and personal property bequeathed to testatrix sister for life with remainder over was deferred, the remainder estate was subject to appraisal as of date of death of life tenant and the tax thereon was payable on such appraised value, though life estate was also subject to inheritance tax and the property thus bequeathed had previously been appraised and the value of remainder estate determined as of date of death of testatrix. I.C.A. §§ 450.7, 450.44, 450.46, 450.47, 450.48, 450.52. [In re Wickham's Estate](#), 241 Iowa 198, 40 N.W.2d 469 (1950).

Where will established a trust with income to go to testatrix husband and daughter and the three grandchildren were made principal beneficiaries, the grandchildren were vested with their rights at the time of testatrix death and for inheritance tax purposes the value was actual cash value as of the date of testatrix death; grandchildren owed tax on value of naked ownership of their grandmother estate which was the difference between the total value of estate and the sum of tax owed by income beneficiaries and the amount exempt from inheritance tax. [LSA"R.S. 9:1807. Succession of Kaufman](#), 274 So. 2d 471 (La. Ct. App. 1st Cir. 1973).

Under Internal Revenue Code, corporate executor was obliged to value testator Jamaican assets either as of date of death or at the alternate valuation date, six months later; therefore, corporate executor used due care in using date of death as date for valuing Jamaican assets on federal estate tax return. 26 U.S.C.A. §§ 2031(a), 2032(a). [Estate of Tully](#), 545 A.2d 1275 (Me. 1988).

The rates and values to be used as a base for assessment of inheritance taxes should be the rates in effect and values determined as of date of death of testator in 1918 and not as of date when contingent beneficiaries were ascertained and became entitled to possession and enjoyment in 1961. R.S.1954, c. 155, §§ 1 et seq., 10, 13, 42, 43. [Stetson v. Johnson](#), 159 Me. 37, 187 A.2d 740 (1963).

In no event can valuation of property subject to inheritance tax under statute establishing procedure when no administration has been taken out within 90 days of death be later than date at which appraisers appointed by court made their return. Code 1957, art. 81, §§ 167, 169. [Pohlhaus v. Register of Wills for Baltimore City](#), 248 Md. 625, 238 A.2d 91 (1968).

The tax imposed upon estates passing from a deceased is a tax imposed not upon the property but upon the right to receive it. Code Supp.1929, art. 81, §§ 105, 118. [Shaughnessy v. Perlman](#), 198 Md. 619, 85 A.2d 38 (1951).

A transfer in contemplation of death is disposition which is deemed testamentary. [Page v. Commissioner of Revenue](#), 389 Mass. 388, 450 N.E.2d 590, 36 U.C.C. Rep. Serv. 941 (1983).

Sufficiency of consideration in respect to husband irrevocable trust executed in 1951 in a good faith, arm length settlement of bona fide disputes in respect to his wife estate must be determined on basis of 1951 market values of what husband received and gave up and not on basis of 1951 value of what husband received and value on date of his death of what he gave up, and consequently no inheritance tax was due with respect to the trust property where, when settlement was made in 1951, the husband received somewhat more (in 1951 value) than 1951 value of what he gave up. M.G.L.A. c. 65 § 1 et seq.; 26 U.S.C.A. (I.R.C.1954) §§ 2036, 2037, 2043 and subd. (a), 2512. [Old Colony Trust Co. v. Commissioner of Corporations and Taxation](#), 346 Mass. 667, 195 N.E.2d 332, 13 A.L.R.3d 646 (1964).

The Inheritance Tax Act imposes tax on clear market value of property at time of death, not by value of right received, but by value of property transferred. Comp.Laws 1948, §§ 205.203, 205.211. [In re Clayton's Estate](#), 343 Mich. 101, 72 N.W.2d 1 (1955).

Under Michigan law, transfer of property by will takes place upon testator death, even though will must be probated before devisee or legatee is entitled to full enjoyment of transfer, since probate, for all purposes relating to existence and transfer of title, relates back to death of testator; and even though ascertainment of value of interest thus transferred, for inheritance tax purposes, necessarily takes place subsequent to time of death, guide is value at the time of death, when interests were acquired. Comp.Laws 1948, §§ 205.201, 205.203. [In re Cress' Estate](#), 335 Mich. 551, 56 N.W.2d 380, 36 A.L.R.2d 907 (1953).

Inheritance tax is imposed upon amount the beneficiary receives from an estate and the taxable event is the receipt of the property. M.S.A. § 291.01, subd. 2. [Haugan's Estate v. Commissioner of Taxation](#), 275 Minn. 405, 147 N.W.2d 387 (1966).

The state inheritance tax, unlike the federal estate tax, is imposed upon the privilege of receiving property rather than upon the privilege of transferring it. [State v. Wagner](#), 233 Minn. 241, 46 N.W.2d 676, 23 A.L.R.2d 762 (1951).

Transfer of assets held in trust triggered by death of decedent, who was not grantor of trust although named as such in trust instrument, was not subject to inheritance tax pursuant to statute providing for taxation of transfers of property which passes to or for use of any person, institution, association or corporation by death of another by deed, instrument or memoranda; rather, transfer was taxable at death of grantor. V.A.M.S. §§ 145.010, subd. 1(4), 145.040, 145.200. [In re Estate of Lamy](#), 679 S.W.2d 288 (Mo. 1984).

Inheritance tax accrues at same time estate vests, that is, upon death of decedent. R.C.M.1947, §§ 43"507, 91"4414, 91"4414(2). [Burr v. Department of Revenue](#), 175 Mont. 473, 575 P.2d 45 (1978).

Valuation for state inheritance tax purposes of decedent United States treasury bonds redeemed at par in discharge of federal estate tax liability had to be based on their clear market value on date of decedent death rather than upon their par value for particular purpose in hands of executor. R.C.M.1947, § 91"4407; Second Liability Bond Act, § 14, 31 U.S.C.A. § 765. [In re Power's Estate](#), 156 Mont. 100, 476 P.2d 506 (1970).

Inter vivos transfers of property intended to take effect at or after death are taxed upon valuation of property as of date of transferor death. [Schroeder v. Zink](#), 4 N.J. 1, 71 A.2d 321 (1950).

Value of property transferred by will upon which inheritance tax is computed is its net value as of date of death. [In re Arkell's Estate](#), 103 N.J. Super. 266, 247 A.2d 130 (App. Div. 1968).

Where transfers were intended to take effect in possession or enjoyment at or after death of transferor, property transferred was properly valued for purpose of taxation as of date of death of transferor, rather than as of date of transfer. N.J.S.A. 54:34"1, subd. c. [Bose v. Division of Taxation, Dept. of Treasury](#), 5 N.J. Super. 266, 68 A.2d 841 (App. Div. 1949).

Absolute, consummate, and immediately effective gifts inter vivos are not taxable unless made by donor in contemplation of death, and the determinant of their taxability as transfers in contemplation of death is the motivating intent and purpose of the transferor. N.J.S.A. 54:34"1, subd. c. [Montclair Trust Co. v. Zink](#), 141 N.J. Eq. 401, 57 A.2d 372 (Prerog. Ct. 1948).

Evidence established that market value of capital stock of close corporation owned by testator at time of death was substantially less when testator died than when contract for sale of stock was entered into by executors, so as to require a reduction in appraisal of market value based upon sales price provided for under contract and assessment of inheritance tax according to the reappraisal. [Turner v. Zink](#), 1 N.J. Super. 114, 61 A.2d 544 (App. Div. 1948).

Ordinarily, events subsequent to death are not considered in fixing fair market value of a decedent's gross estate for tax purposes. [Estate of Warshaw v. Director, Division of Taxation](#), 27 N.J. Tax 287, 2013 WL 3212274 (Super. Ct. App. Div. 2013).

A sale of decedent's property subsequent to his death may be relevant to establish that the initial appraisal of fair market value for estate tax purposes was incorrect, so long as that change was reasonably foreseeable. [Estate of Warshaw v. Director, Div. of Taxation](#), 26 N.J. Tax 358, 2012 WL 2515302 (2012).

In determining New York estate tax, deceased United States government bonds should be valued at market value as of date of death rather than at par value, though under federal statute bonds are allowed credit at par toward payment on federal estate tax. 26 U.S.C.A. (I.R.C.1954) §§ 2031, 6312; 26 U.S.C.A. (I.R.C.1939) § 811; Executive Order Nov. 5, 1954, No. 10574, § 2; Tax Law, § 249"r. [In re Behm's Estate](#), 35 Misc. 2d 630, 231 N.Y.S.2d 164 (Sur. Ct. 1962).

Value of property subject to estate tax must be determined as of date of death of deceased. [In re Cutler's Estate](#), 3 Misc. 2d 44, 154 N.Y.S.2d 292 (Sur. Ct. 1956).

The determination of fair market value of a decedent estate may be postponed to await the happening of some event which may render appraisal easier and more certain, and in such case the tax may be based upon full value when persons entitled thereto come into beneficial possession or enjoyment. Tax Law, § 230, subd. 7. [In re Notman's Estate](#), 2 Misc. 2d 465, 153 N.Y.S.2d 317 (Sur. Ct. 1956).

Estate taxes which are predicated on the death of decedent must be determined by the state of facts existing on the date of decedent death and not by what might develop later, unless otherwise specifically provided by statute. [In re Whiteman's Estate](#), 114 N.Y.S.2d 633 (Sur. Ct. 1952).

Where city employee on retirement had choice of one of four options as to retirement allowance, selection of option which provided for joint and survivorship annuity to employee and wife was a transfer of property right in reserve funds and estimated value of widow right was includible in gross estate as property of which testator made a transfer intended to take effect in possession or enjoyment at or after his death. Administrative Code, §§ B3"46.0, options 1"4, B3"29.0, B3"46.0, B3"50.0; Tax Law, §§ 249"m et seq., 249"r, subd. 3. [In re Endemann's Estate](#), 201 Misc. 1077, 106 N.Y.S.2d 849 (Sur. Ct. 1951).

Condition of estate which exists at time of death of testator controls in determining imposition of estate tax and matter of exemptions. Tax Law, § 249"q. [In re Hanft's Estate](#), 194 Misc. 91, 85 N.Y.S.2d 10 (Sur. Ct. 1948).

The transfer of a net estate takes place upon decedent death, and every estate transferred must be valued as of that date for estate tax purposes. [In re Campanari's Estate](#), 188 Misc. 666, 68 N.Y.S.2d 253 (Sur. Ct. 1947).

Where deceased prior to his death, entered into a separation agreement with his wife to pay her \$250 a month for life or until her remarriage, and thereafter wife obtained a divorce decree which incorporated separation agreement, and at time of deceased death, wife had not remarried and was 32 years old, court, by using tables employed in determining a widow rights under the Workmen Compensation Law, computed the amount of future payments from the estate to wife as \$38,568 and allowed a deduction in that amount for estate tax purposes. Tax Law, § 249"s. [In re Luke's Estate](#), 75 N.Y.S.2d 572 (Sur. Ct. 1947).

The state inheritance tax is a toll or impost appropriated to itself by state for or in connection with right of succession to property, and it accrues at same time that estate vests, that is upon decedent death. [In re Levy's Estate](#), 70 N.Y.S.2d 72, 38 A.F.T.R. (P-H) P 940 (Sur. Ct. 1947).

The deductions for charitable bequests in computing estate tax are not confined to transfers of expectant estates which are not dependent upon any contingency, and the deduction must be allowed for the value of any estate, whether in possession or expectant, when value can be determined with reasonable certainty upon basis of known data. Tax Law, art. 10"C, § 249"s, subd. 3. [In re Buell's Estate](#), 198 Misc. 358, 66 N.Y.S.2d 180 (Sur. Ct. 1946).

Where will created trust for testator widow for life and empowered trustees to invade principal so that widow annual income would not be less than \$2,000, pro forma order suspending taxation of future contingent remainder until life tenant death was not res judicata and did not preclude determination of additional valuation to widow after her death in an amount constituting difference between interest previously taxed to her and net value of estate which she had entirely consumed under the right to invade principal. Tax Law, § 222. [In re Champlin's Estate](#), 58 N.Y.S.2d 545 (Sur. Ct. 1945).

Under Ohio tax statute relating to valuation of property in gross estate of decedent, United States Treasury H bonds, purchased by decedent on last business day before his death, were to be included in estate at their valuation on date of death, notwithstanding right of estate to have same accepted by United States at par value in payment of federal estate taxes. 31 U.S.C.A. § 765 (Repealed 1971); R.C. § 5731.01(B). [In re Kaufman's Estate](#), 53 Ohio St. 2d 231, 7 Ohio Op. 3d 397, 374 N.E.2d 142 (1978).

No change of title, transfers, or agreement of those who succeed to decedent estate, among themselves or with strangers, can affect inheritance tax, and all questions concerning tax are determined as of decedent death. R.C. §§ 5731.01(B), 5731.02(A), (C)(2). [In re Cantor's Estate](#), 31 Ohio Op. 2d 393, 94 Ohio L. Abs. 102, 200 N.E.2d 515 (Prob. Ct. 1963).

Where value of life estate and remainder was, for inheritance tax purposes, based on actuarial value on date of testator death, executors of deceased life tenant estate were not entitled to an adjustment of values based on actual duration of life estate and a refund of inheritance tax allegedly overpaid. R.C. §§ 2131.01, 5731.20, 5731.23, 5731.24, 5731.27, 5731.28, 5731.31. [In re Hough's Estate](#), 78 Ohio L. Abs. 238, 152 N.E.2d 561 (Prob. Ct. 1958).

Inheritance taxes must be determined by the amount of the estate at the time of death and may not be altered by a later agreement between the heirs and challengers to the will. ORS 118.070(1)(a)(Repealed). [First Nat. Bank of Oregon v. Department of Revenue, State of Or., 294 Or. 60, 653 P.2d 985 \(1982\).](#)

For purposes of statute authorizing prepayment of inheritance tax on future interests, appropriate time for appraising interests postponed in possession or enjoyment until expiration of life estate for years is either at the time the remainderman exercises his statutory option to prepay the tax or, absent such election, at the time remainderman comes into actual possession or enjoyment. 72 P.S. §§ 2485"506, 2485"651, 2485"713(a), 2485"714(a). [Estate of Miller, 467 Pa. 193, 355 A.2d 577 \(1976\).](#)

Inheritance tax imposed upon future interests is to be based upon the value of those interests at the time the ultimate owner either prepays the tax or actually comes into possession or enjoyment of the property. 72 P.S. §§ 2301"2307, 2304, 2485"103, 2485"1201. [In re Carver's Estate, 422 Pa. 609, 222 A.2d 882 \(1966\).](#)

Where life tenant enjoyed income for slightly more than one year and died before life estate was appraised for transfer inheritance tax purposes, value of life estate must be appraised as of date of testator death measured by number of years of probable duration of life tenant life as determined by mortality tables and not by period of time during which life estate actually endured. 72 P.S. § 2301 et seq. [In re Reynolds' Estate, 359 Pa. 616, 60 A.2d 57 \(1948\).](#)

Where testator left a life estate to this widow with power to consume and with contingent remainders over to collateral heirs, principal that widow consumed was subject to a transfer inheritance tax of 2 per cent. and the residue that passed to collateral heirs was assessable at 10 per cent., and determination of such items should have been suspended until widow death. [In re Darsie's Estate, 354 Pa. 540, 47 A.2d 815 \(1946\).](#)

Life insurance policies, which were transferred to irrevocable trusts within three years of transferor death and which constituted part of the estate for inheritance tax purposes, had to be valued as of the date of the transferor death rather than the date of the transfer. T.C.A. §§ 30 "1602, 30"1604, 30"1621 (now §§ 67"8"304, 67"8"306, 67"8"412). [Mercy v. Olsen, 672 S.W.2d 196 \(Tenn. 1984\).](#)

An estate that is subject to the inheritance tax is valued as of the date of decedent death. [RCWA 83.16.020, 83.28.050, 83.28.060. Matter of Henry's Estate, 88 Wash. 2d 745, 565 P.2d 1166 \(1977\).](#)

Valuation of estate for state inheritance tax purposes must be fixed as of date of death. [RCWA 83.40.040. In re Toomey's Estate, 75 Wash. 2d 915, 454 P.2d 420 \(1969\).](#)

Inheritance tax is measured by the value of assets of estate after payment of debts owing by decedent at time of death, and obligation which has been timely established as a bona fide debt of decedent is deductible in determining full value of entire property for purpose of computing inheritance tax, even though such debt is not paid before tax is computed. [RCW 83.04.010, 83.44.010. In re Gufler's Estate, 43 Wash. 2d 440, 261 P.2d 434 \(1953\).](#)

Where under will of testatrix who died in 1923 identity of alternative remaindermen could not be determined until death of life beneficiary and proceedings for determination of inheritance tax on contingent remainders under will were held in abeyance by order entered by county court in 1924, inheritance tax must be levied upon the full appraised value of such remainder interests at death of life beneficiary, but at the rates and subject to exemptions applicable at death of testatrix. St.1953, § 72.15(9). [In re Latimer's Estate, 271 Wis. 1, 72 N.W.2d 321 \(1955\).](#)

[\[Top of Section\]](#)

[END OF SUPPLEMENT]

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.