2013 ESTATE AND GIFT TAX LEGISLATIVE BULLETIN
(2013 Regular Session)

MINNESOTA · REVENUE

Appeals and Legal Services Division
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Bulletin Date: May 31, 2013

Unless otherwise noted, the provisions discussed in this bulletin can be found in 2013 Minn. Laws, Chapter 143.

ESTATE TAX

Estate tax filing requirement. Minn. Stat. § 289A.10, subd. 1, was amended to provide that taxable gifts (those in excess of the annual per-recipient, federal exclusion amount made within three years of decedent's death) must be added to the value of the federal gross estate to determine if the estate exceeds the $1 million filing requirement. Effective for estates of decedents dying after December 31, 2012.

Recapture return required. By adding subdivision 1a to Minn. Stat. § 289A.10, the return filing requirement for the recapture tax was moved from the estate tax chapter (Chapter 291) to the administration and compliance chapter (Chapter 289A). Effective retroactively for estates of decedents dying after June 30, 2011.

Recapture informational return required. Subdivision 18 was added to Minn. Stat. § 289A.12 to require that qualified heirs file two information returns if a decedent deducted qualified small business property or qualified farm property from the taxable estate. The first return is due two years after decedent's death. The second return is due three years after decedent's death. Effective for returns required to be filed after December 31, 2013.

Recapture return filing due date. Subdivision 3a was added to Minn. Stat. § 289A.18 to clarify the filing due date of the recapture tax return: on or before 6 months after the disqualifying event. Effective retroactively for estates of decedents dying after June 30, 2011.

Recapture payment due date. Minn. Stat. § 289A.20, subd. 3 was amended and subdivision 3a added to clarify the recapture tax payment due date: on or before 6 months after the disqualifying event. Effective retroactively for estates of decedents dying after June 30, 2011.

Minnesota adjusted taxable estate. The definition of "Minnesota adjusted taxable estate" found in Minn. Stat. § 291.005, subd. 1, was amended to include the amount of taxable gifts, as defined for Minnesota gift tax purposes, made by the decedent within three years of death. Effective for estates of decedents dying after December 31, 2012.

Situs rules for gifts. Minn. Stat. § 291.005, subd. 1, was amended to provide situs rules for gifts: gifts of tangible personal property are assigned to the place where the property was normally kept or located when the gift was executed and gifts of intangible property are assigned to the decedent's domicile at the time the gift was executed. Effective for estates of decedents dying after December 31, 2012.

Situs rules for nonresidents. Minn. Stat. § 291.005, subd. 1, was amended to provide a special situs rule for nonresidents who have ownership interests in pass-through entities that own real or tangible personal property in Minnesota. Pass-through entities are defined as S corporations, partnerships, single-member limited liability companies, and trusts. The amendment assigns the situs of the real and tangible personal property as if the pass-through entity does not exist. Effective for estates of decedents dying after December 31, 2012.

Estate tax reduction for Minnesota gift tax. Minn. Stat. § 291.03, subd. 1, was amended to reduce the Minnesota estate tax by any Minnesota gift tax paid on gifts included in the Minnesota adjusted taxable estate. Effective for estates of decedents dying after December 31, 2012.

Nonresident decedent tax credit. Minn. Stat. § 291.03, subd. 1, was amended and subdivision 1c added to provide a credit for any estate or inheritance tax paid to another state by a nonresident on property held in a pass-through entity. Effective for estates of decedents dying after December 31, 2012.

Family member. Minn. Stat. § 291.03, subd. 8, was amended to provide that a trust whose present beneficiaries are all family members qualifies as a family member for purposes of the qualified small business property and qualified farm property deduction. Effective retroactively for estates of decedents dying after June 30, 2011.

Qualified small business property. Minn. Stat. § 291.03, subd. 9, was amended to:

- clarify that during the taxable year that ended before decedent's death the trade or business must not have been a passive activity and the decedent or the decedent's spouse must have materially participated in the trade or business;
- exclude publicly traded securities and assets not used in the operation of the trade or business from qualifying for the deduction;
- allow, in the case of a sole proprietor, that if property is replaced by similar property within the three-year period prior to decedent's death, the replacement property will be treated as having met the three-year ownership test prior to decedent's death; and
- provide that for three years following the decedent's death the trade or business must not be a passive activity and a family member must materially participate in the trade or business.

Effective retroactively for estates of decedents dying after June 30, 2011.

Qualified farm property. Minn. Stat. § 291.03, subd. 10, was amended to:

- clarify that the property must be agricultural land that is owned by a person or entity that either not subject to or is in compliance with section 500.24;
- clarify that for property taxes payable in the taxable year of decedent's death, the property must be classified as class 2a agricultural property and as agricultural homestead, agricultural relative homestead, or special agricultural homestead;
- remove the requirement that for three years after decedent's death a family member must continuously use the property in the operation of the trade or business; and
- require that for three years after decedent's death the property must be classified for property tax purposes as class 2a agricultural property.

Effective retroactively for estates of decedents dying after June 30, 2011.

Recapture tax. Minn. Stat. § 291.03, subd. 11, was amended to provide in the case of a sole proprietor that the qualified heir will not be treated as having disposed of an interest in the qualified property if the qualified heir replaces qualified small business property with similar property. Effective retroactively for estates of decedents dying after June 30, 2011.

GIFT TAX

Chapter 292 was created, imposing a 10% tax on taxable gifts with a lifetime credit of $100,000 (the equivalent of a $1 million exemption). The tax does not apply to transfers of tangible personal property or real property with situs outside Minnesota. All provisions are effective for taxable gifts made after June 30, 2013.

- **Definitions.** "Resident" has the same meaning as for individual income tax. Other terms defined in the estate tax chapter apply to the gift tax chapter.
- **Taxable gifts.** Taxable gifts are defined by reference to the federal gift tax. As a result, gifts below the annual exemption amount are excluded. Federal generation skipping gifts are excluded. Gifts to charities, gifts to spouses, and certain transfers for educational or medical expenses are also excluded.
- **Filing.** Returns are required to be filed by April 15 after the close of the calendar year in which the gift was made. If the donor dies, the due date is the time for filing the federal gift tax return.
- **Filing extensions.** The commissioner may extend the time for filing upon written request, filing a tentative return, and a showing of good cause. However, tentative tax must be paid with interest.
- **Appraisals.** The commissioner is authorized to require the donor or donee to show the property subject to tax and to hire suitable persons to appraise the property.
- **Payments.** Payment is required by April 15 after the close of the calendar year in which the gift was made. If the donor dies, the payment due date is the due date for paying the federal gift tax. A 10% penalty (or $100, if greater) applies to late payments.
- **Federal changes.** Taxpayer must notify the commissioner of federal changes in the value of taxable gifts within 180 days of a final determination. If a federal amended gift tax return is filed, the taxpayer must file an amended Minnesota return within 180 days.

Minnesota tax laws. Minn. Stat. § 270B.01, subd. 8, was amended to reflect that "Minnesota tax laws" includes the newly created gift tax chapter. Effective for gifts made after December 31, 2012.

Data subject. Minn. Stat. § 270B.03, subd. 1, was amended to reflect that a donor may inspect the gift tax return and return information. Effective May 24, 2013.