

Department of Revenue

Revenue Notice # 12-05: Estate Tax – Estates Required to File a Minnesota Return but not a Federal Return – Revocation and Replacement of Revenue Notice # 10-03

Introduction

In computing the Minnesota estate tax where an estate is required to file a Minnesota estate tax return but a federal estate tax return is not required, the Minnesota Department of Revenue's position is as provided below. This notice revokes and replaces Revenue Notice # 10-03.

For estates of decedents who die in 2010, this notice reflects changes to the Internal Revenue Code and Minnesota Statutes since Revenue Notice # 10-03 was issued. The Internal Revenue Code was amended to impose a federal estate tax on decedents who die in 2010, while allowing some decedents to opt out of the tax. Minnesota Statutes were amended to provide an irrevocable, qualified terminable interest property (QTIP) election for estates of decedents who die in 2010 and opt out of the federal estate tax.

For estates of decedents who die in years other than 2010, this notice restates the position previously announced in Revenue Notice # 10-03.

At the time of publishing this revenue notice, current federal estate tax laws are scheduled to sunset on December 31, 2012 (*Public Law 107-16*, section 901, as amended by *Public Law 111-312*). If this occurs, or if the Internal Revenue Code or Minnesota Statutes change in some other way, the department's position announced in this revenue notice may change.

Department Position

Abatement of Penalties

If the estate needs more time to meet the due date (9 months from date of death) for filing and paying the Minnesota estate tax, the Commissioner of Revenue will abate the penalties for late filing and late payment if the estate pays a "reasonable estimate" of the Minnesota estate tax by the due date. The estate must file the return and pay the remaining tax within 15 months of the decedent's date of death. For the purposes of this notice, a payment of at least 90 percent of the amount of Minnesota estate tax shown on the return will be presumed to be a "reasonable estimate."

Alternate Valuation Election

If the estate does not have a federal filing requirement, the estate must use the date of death values of assets since alternate valuation election (valuation of asset six months from date of death) is not available. Alternate valuation cannot be elected federally since there will be no reduction in the amount of federal estate tax as a result of making the election (*Internal Revenue Code*, section 2032(c)). Minnesota allows the alternative valuation only if it is elected federally.

Qualified Terminable Interest Property (QTIP) Election

If the estate of a decedent dying in 2010 opts out of the federal estate tax, the executor may make an irrevocable QTIP election on the 2010 Minnesota estate tax return using the 2010 federal estate tax return as a worksheet. If the irrevocable Minnesota QTIP election is made, the election must not reduce the taxable estate below \$3.5 million (*Minnesota Statutes*, section 291.03, subdivision 1b).

For all other estates, Minnesota recognizes a QTIP election (*Internal Revenue Code*, section 2056(b)(7)) if the estate files a federal estate tax return and makes the election at the federal level.

Other Elections

All other elections provided by the Internal Revenue Code are only available for Minnesota purposes if the estate files a federal estate tax return and makes the election at the federal level. These elections include the special land use valuation election (*Internal Revenue Code*, section 2032A) and qualified domestic trust election (*Internal Revenue Code*, section 2056A).

Administrative Expenses

Deductions for administrative expenses of the estate can only be claimed on the Minnesota estate tax return if the expenses are not claimed as a deduction on the estate's federal fiduciary income tax return or returns (*Minnesota Statutes*, section 291.03, subdivision 1a).

Revenue Notice # 10-03 is revoked and replaced with this notice.

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for Tax Policy