

Minnesota Department of Revenue

Revenue Notice # 17-05: Estate Tax – Pass-Through Entities – Calculation of Minnesota Gross Estate

Introduction

On May 22, 2013, the Minnesota Legislature enacted 2013 *Minnesota Laws*, chapter 143, article 7, section 4. The provision became effective January 1, 2013. This legislation modified the definition of the term “situs of property” for the purposes of the Minnesota estate tax.

Department Position

Estates of nonresident decedents are required to file for and pay Minnesota estate taxes when, during life, they: 1) owned real or tangible property having situs in Minnesota; and 2) had a federal gross estate, including property in and outside of Minnesota, exceeding the value of the “exclusion amount” provided for under *Minnesota Statutes* section 291.016, subdivision 3.

The 2013 legislation, codified at *Minnesota Statutes* section 291.005, subdivision 1, subparagraphs (9) and (10), requires that estates of nonresident individuals disregard the existence of “pass-through entities” in determining where real and tangible property has situs.

For the purposes of the Minnesota estate tax, “pass-through entity” is defined as follows:

- (i) an entity electing S corporation status under section 1362 of the Internal Revenue Code;
- (ii) an entity taxed as a partnership under subchapter K of the Internal Revenue Code;
- (iii) a single-member limited liability company or similar entity, regardless of whether it is taxed as an association or is disregarded for federal income tax purposes under *Code of Federal Regulations*, title 26, section 301.7701-3; or
- (iv) a trust to the extent the property is includible in the decedent's federal gross estate; but excludes
- (v) an entity whose ownership interest securities are traded on an exchange regulated by the Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act, *United States Code*, title 15, section 78f.


Minnesota Statutes section 291.005, subdivision 1(9) (2014).

Accordingly, estates of nonresident decedents dying after January 1, 2013 must include in Minnesota gross estate the decedents' *pro rata* share of: 1) the value of any portion of real property located in Minnesota, and included in federal gross estate, that is owned through an interest in a pass-through entity; and 2) the value of any portion of tangible that was normally kept in Minnesota, and included in federal gross estate, owned through an interest in a pass-through entity.

The statutory requirement that pass-through entities be disregarded in ascertaining the situs of

real and tangible property is not applicable to the estates of resident decedents. Accordingly, the estates of resident decedents must include in Minnesota gross estate: 1) the value of all real property located in Minnesota and included in federal gross estate; 2) the value of all tangible property normally kept in Minnesota and included in federal gross estate; and 3) the value of all intangible property included in federal gross estate, including the value of interests in pass-through entities regardless of such entities' holdings.

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