State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 71

01/14/2013 Authored by Dettmer, Drazkowski, Gunther, Lohmer, Torkelson and others
The bill was read for the first time and referred to the Committee on Taxes

A bill for an act

relating to taxation; estate; conforming to federal exemption amount; amending Minnesota Statutes 2012, sections 291.005, subdivision 1; 291.03, subdivision 1; repealing Minnesota Statutes 2012, section 291.03, subdivisions 8, 9, 10, 11.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2012, section 291.005, subdivision 1, is amended to read:

Subdivision 1. **Scope.** Unless the context otherwise clearly requires, the following terms used in this chapter shall have the following meanings:

(1) "Commissioner" means the commissioner of revenue or any person to whom the commissioner has delegated functions under this chapter.

(2) "Federal gross estate" means the gross estate of a decedent as required to be valued and otherwise determined for federal estate tax purposes under the Internal Revenue Code.

(3) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended through ~~April 14, 2011, but without regard to the provisions of sections 501 and 901 of Public Law 107-16, as amended by Public Law 111-312, and section 301(c) of Public Law 111-312~~ December 31, 2011.

(4) "Minnesota adjusted taxable estate" means federal adjusted taxable estate as defined by section 2011(b)(3) of the Internal Revenue Code, plus

~~(i)~~ the amount of deduction for state death taxes allowed under section 2058 of the Internal Revenue Code~~; less~~

~~(ii)(A) the value of qualified small business property under section 291.03, subdivision 9, and the value of qualified farm property under section 291.03, subdivision 10, or (B) $4,000,000, whichever is less~~.

(5) "Minnesota gross estate" means the federal gross estate of a decedent after (a) excluding therefrom any property included therein which has its situs outside Minnesota, and (b) including therein any property omitted from the federal gross estate which is includable therein, has its situs in Minnesota, and was not disclosed to federal taxing authorities.

(6) "Nonresident decedent" means an individual whose domicile at the time of death was not in Minnesota.

(7) "Personal representative" means the executor, administrator or other person appointed by the court to administer and dispose of the property of the decedent. If there is no executor, administrator or other person appointed, qualified, and acting within this state, then any person in actual or constructive possession of any property having a situs in this state which is included in the federal gross estate of the decedent shall be deemed to be a personal representative to the extent of the property and the Minnesota estate tax due with respect to the property.

(8) "Resident decedent" means an individual whose domicile at the time of death was in Minnesota.

(9) "Situs of property" means, with respect to real property, the state or country in which it is located; with respect to tangible personal property, the state or country in which it was normally kept or located at the time of the decedent's death; and with respect to intangible personal property, the state or country in which the decedent was domiciled at death.

EFFECTIVE DATE. This section is effective for estates of decedents dying after December 31, 2012.

Sec. 2. Minnesota Statutes 2012, section 291.03, subdivision 1, is amended to read:

Subdivision 1. **Tax amount.** ~~(a)~~ The tax imposed shall be an amount equal to the proportion of the maximum credit for state death taxes computed under section 2011 of the Internal Revenue Code for decedents dying in calendar year 2012, but without regard to repeal of the credit and using Minnesota adjusted taxable estate instead of federal adjusted taxable estate, as the Minnesota gross estate bears to the value of the federal gross estate. For purposes of this section, expenses which are deducted for federal income tax purposes under section 642(g) of the Internal Revenue Code as amended through December 31, 2002, are not allowed in computing the tax under this chapter.

~~(b) The tax determined under this subdivision must not be greater than the sum of the following amounts multiplied by a fraction, the numerator of which is the Minnesota gross estate and the denominator of which is the federal gross estate:~~

~~(1) the rates and brackets under section 2001(c) of the Internal Revenue Code multiplied by the sum of:~~

~~(i) the taxable estate, as defined under section 2051 of the Internal Revenue Code; plus~~

~~(ii) adjusted taxable gifts, as defined in section 2001(b) of the Internal Revenue Code; less~~

~~(iii) the lesser of (A) the sum of the value of qualified small business property under subdivision 9, and the value of qualified farm property under subdivision 10, or (B) $4,000,000; less~~

~~(2) the amount of tax allowed under section 2001(b)(2) of the Internal Revenue Code; and less~~

~~(3) the federal credit allowed under section 2010 of the Internal Revenue Code.~~

~~(c) For purposes of this subdivision, "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended through December 31, 2000.~~

EFFECTIVE DATE. This section is effective for estates of decedents dying after December 31, 2012.

Sec. 3. **REPEALER.**

Minnesota Statutes 2012, section 291.03, subdivisions 8, 9, 10, and 11, are repealed.

EFFECTIVE DATE. This section is effective for estates of decedents dying after December 31, 2012.

291.03 RATES.

Subd. 8. **Definitions.** (a) For purposes of this section, the following terms have the meanings given in this subdivision.

(b) "Family member" means a family member as defined in section 2032A(e)(2) of the Internal Revenue Code.

(c) "Qualified heir" means a family member who acquired qualified property from the decedent and satisfies the requirement under subdivision 9, clause (6), or subdivision 10, clause (4), for the property.

(d) "Qualified property" means qualified small business property under subdivision 9 and qualified farm property under subdivision 10.

Subd. 9. **Qualified small business property.** Property satisfying all of the following requirements is qualified small business property:

(1) The value of the property was included in the federal adjusted taxable estate.

(2) The property consists of the assets of a trade or business or shares of stock or other ownership interests in a corporation or other entity engaged in a trade or business. The decedent or the decedent's spouse must have materially participated in the trade or business within the meaning of section 469 of the Internal Revenue Code during the taxable year that ended before the date of the decedent's death. Shares of stock in a corporation or an ownership interest in another type of entity do not qualify under this subdivision if the shares or ownership interests are traded on a public stock exchange at any time during the three-year period ending on the decedent's date of death.

(3) The gross annual sales of the trade or business were $10,000,000 or less for the last taxable year that ended before the date of the death of the decedent.

(4) The property does not consist of cash or cash equivalents. For property consisting of shares of stock or other ownership interests in an entity, the amount of cash or cash equivalents held by the corporation or other entity must be deducted from the value of the property qualifying under this subdivision in proportion to the decedent's share of ownership of the entity on the date of death.

(5) The decedent continuously owned the property for the three-year period ending on the date of death of the decedent.

(6) A family member continuously uses the property in the operation of the trade or business for three years following the date of death of the decedent.

(7) The estate and the qualified heir elect to treat the property as qualified small business property and agree, in the form prescribed by the commissioner, to pay the recapture tax under subdivision 11, if applicable.

Subd. 10. **Qualified farm property.** Property satisfying all of the following requirements is qualified farm property:

(1) The value of the property was included in the federal adjusted taxable estate.

(2) The property consists of a farm meeting the requirements of section 500.24, and was classified for property tax purposes as the homestead of the decedent or the decedent's spouse or both under section 273.124, and as class 2a property under section 273.13, subdivision 23.

(3) The decedent continuously owned the property for the three-year period ending on the date of death of the decedent.

(4) A family member continuously uses the property in the operation of the trade or business for three years following the date of death of the decedent.

(5) The estate and the qualified heir elect to treat the property as qualified farm property and agree, in a form prescribed by the commissioner, to pay the recapture tax under subdivision 11, if applicable.

Subd. 11. **Recapture tax.** (a) If, within three years after the decedent's death and before the death of the qualified heir, the qualified heir disposes of any interest in the qualified property, other than by a disposition to a family member, or a family member ceases to use the qualified property which was acquired or passed from the decedent, an additional estate tax is imposed on the property.

(b) The amount of the additional tax equals the amount of the exclusion claimed by the estate under subdivision 8, paragraph (d), multiplied by 16 percent.

(c) The additional tax under this subdivision is due on the day which is six months after the date of the disposition or cessation in paragraph (a).