

**SENATE**  
**STATE OF MINNESOTA**  
**EIGHTY-EIGHTH SESSION**

**S.F. No. 2203**

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DATE	D-PG	OFFICIAL STATUS
03/03/2014	5928	Introduction and first reading Referred to Taxes

A bill for an act

1.1 relating to taxation; estate and gift; conforming to the federal exemption  
1.2 amount; amending Minnesota Statutes 2013 Supplement, sections 289A.10,  
1.3 subdivision 1; 291.005, subdivision 1; 291.03, subdivision 1; 292.17, subdivision  
1.4 2; repealing Minnesota Statutes 2013 Supplement, sections 289A.10, subdivision  
1.5 1a; 289A.12, subdivision 18; 289A.18, subdivision 3a; 289A.20, subdivision  
1.6 3a; 291.03, subdivisions 8, 9, 10, 11.

1.7  
1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. Minnesota Statutes 2013 Supplement, section 289A.10, subdivision 1,  
1.10 is amended to read:

1.11 Subdivision 1. **Return required.** In the case of a decedent who has an interest in  
1.12 property with a situs in Minnesota, the personal representative must submit a Minnesota  
1.13 estate tax return to the commissioner, on a form prescribed by the commissioner, if:

1.14 ~~(1) a federal estate tax return is required to be filed; or~~

1.15 ~~(2) the sum of the federal gross estate and federal adjusted taxable gifts made within~~  
1.16 ~~three years of the date of the decedent's death exceeds \$1,000,000.~~

1.17 The return must contain a computation of the Minnesota estate tax due. The return  
1.18 must be signed by the personal representative.

1.19 **EFFECTIVE DATE.** This section is effective for estates of decedents dying after  
1.20 June 30, 2013.

1.21 Sec. 2. Minnesota Statutes 2013 Supplement, section 291.005, subdivision 1, is  
1.22 amended to read:

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

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

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

2.5 (3) "Internal Revenue Code" means the United States Internal Revenue Code of  
2.6 1986, as amended through January 3, 2013, but without regard to the provisions of section  
2.7 2011, paragraph (f), of the Internal Revenue Code.

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

2.10 (i) the amount of deduction for state death taxes allowed under section 2058 of  
2.11 the Internal Revenue Code; and

2.12 (ii) the amount of taxable gifts, as defined in section 292.16, and made by the  
2.13 decedent within three years of the decedent's date of death; less.

2.14 ~~(iii)(A) the value of qualified small business property under section 291.03,~~  
2.15 ~~subdivision 9, and the value of qualified farm property under section 291.03, subdivision~~  
2.16 ~~10, or (B) \$4,000,000, whichever is less.~~

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

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

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

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

2.33 (9) "Situs of property" means, with respect to:

2.34 (i) real property, the state or country in which it is located;

2.35 (ii) tangible personal property, the state or country in which it was normally kept  
2.36 or located at the time of the decedent's death or for a gift of tangible personal property

3.1 within three years of death, the state or country in which it was normally kept or located  
3.2 when the gift was executed; and

3.3 (iii) intangible personal property, the state or country in which the decedent was  
3.4 domiciled at death or for a gift of intangible personal property within three years of death,  
3.5 the state or country in which the decedent was domiciled when the gift was executed.

3.6 For a nonresident decedent with an ownership interest in a pass-through entity  
3.7 with assets that include real or tangible personal property, situs of the real or tangible  
3.8 personal property is determined as if the pass-through entity does not exist and the real  
3.9 or tangible personal property is personally owned by the decedent. If the pass-through  
3.10 entity is owned by a person or persons in addition to the decedent, ownership of the  
3.11 property is attributed to the decedent in proportion to the decedent's capital ownership  
3.12 share of the pass-through entity.

3.13 (10) "Pass-through entity" includes the following:

3.14 (i) an entity electing S corporation status under section 1362 of the Internal Revenue  
3.15 Code;

3.16 (ii) an entity taxed as a partnership under subchapter K of the Internal Revenue Code;

3.17 (iii) a single-member limited liability company or similar entity, regardless of  
3.18 whether it is taxed as an association or is disregarded for federal income tax purposes  
3.19 under Code of Federal Regulations, title 26, section 301.7701-3; or

3.20 (iv) a trust to the extent the property is includible in the decedent's federal gross estate.

3.21 **EFFECTIVE DATE.** This section is effective for estates of decedents dying after  
3.22 June 30, 2013.

3.23 Sec. 3. Minnesota Statutes 2013 Supplement, section 291.03, subdivision 1, is  
3.24 amended to read:

3.25 Subdivision 1. **Tax amount.** (a) The tax imposed shall be an amount equal to the  
3.26 proportion of the maximum credit for state death taxes computed under section 2011  
3.27 of the Internal Revenue Code, but without regard to section 2011, paragraph (f), and  
3.28 using Minnesota adjusted taxable estate instead of federal adjusted taxable estate, as the  
3.29 Minnesota gross estate bears to the value of the federal gross estate. The tax is reduced by:

3.30 (1) the gift tax paid by the decedent under section 292.17 on gifts included in the  
3.31 Minnesota adjusted taxable estate and not subtracted as qualified farm or small business  
3.32 property; and

3.33 (2) any credit allowed under subdivision 1c.

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

4.4 (1) the rates and brackets under section 2001(c) of the Internal Revenue Code, as  
 4.5 amended through December 31, 2000, multiplied by the sum of:

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

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

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

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

4.14 (3) the federal credit allowed under section 2010 of the Internal Revenue Code and  
 4.15 including the credit attributable to the deceased spousal unused exclusion amount.

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

4.18 **EFFECTIVE DATE.** This section is effective for estates of decedents dying after  
 4.19 June 30, 2013.

4.20 Sec. 4. Minnesota Statutes 2013 Supplement, section 292.17, subdivision 2, is  
 4.21 amended to read:

4.22 Subd. 2. **Lifetime credit.** A credit is allowed against the tax imposed under this  
 4.23 section equal to ~~\$100,000~~ ten percent of the applicable exclusion amount, including  
 4.24 the inflation adjustment and deceased spousal unused exclusion amount, under section  
 4.25 2010(c) of the Internal Revenue Code. This credit applies to the cumulative amount of  
 4.26 taxable gifts made by the donor during the donor's lifetime.

4.27 **EFFECTIVE DATE.** This section is effective for estates of decedents dying after  
 4.28 June 30, 2013.

4.29 Sec. 5. **REPEALER.**

4.30 Minnesota Statutes 2013 Supplement, sections 289A.10, subdivision 1a; 289A.12,  
 4.31 subdivision 18; 289A.18, subdivision 3a; 289A.20, subdivision 3a; and 291.03,  
 4.32 subdivisions 8, 9, 10, and 11, are repealed.

5.1 **EFFECTIVE DATE.** This section is effective for decedents dying after June 30,  
5.2 2013.

**289A.10 FILING REQUIREMENTS FOR ESTATE TAX RETURNS.**

Subd. 1a. **Recapture tax return required.** If a disposition or cessation as provided by section 291.03, subdivision 11, paragraph (a), has occurred, the qualified heir, as defined under section 291.03, subdivision 8, paragraph (c), or personal representative of the decedent's estate must submit a recapture tax return to the commissioner.

**289A.12 FILING REQUIREMENTS FOR INFORMATION RETURNS AND REPORTS.**

Subd. 18. **Returns by qualified heirs.** A qualified heir, as defined in section 291.03, subdivision 8, paragraph (c), must file two returns with the commissioner attesting that no disposition or cessation as provided by section 291.03, subdivision 11, paragraph (a), occurred. The first return must be filed no earlier than 24 months and no later than 26 months after the decedent's death. The second return must be filed no earlier than 36 months and no later than 39 months after the decedent's death.

**289A.18 DUE DATES FOR FILING OF RETURNS.**

Subd. 3a. **Recapture tax return.** A recapture tax return must be filed with the commissioner within six months after the date of the disposition or cessation as provided by section 291.03, subdivision 11, paragraph (a).

**289A.20 DUE DATES FOR MAKING PAYMENTS OF TAX.**

Subd. 3a. **Recapture tax.** The additional estate tax imposed by section 291.03, subdivision 11, paragraph (b), is due and payable on or before the expiration of the date provided by section 291.03, subdivision 11, paragraph (c).

**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, or a trust whose present beneficiaries are all family members as defined in section 2032A(e)(2) of the Internal Revenue Code.

(c) "Qualified heir" means a family member who acquired qualified property upon the death of the decedent and satisfies the requirement under subdivision 9, clause (7), or subdivision 10, clause (5), 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. 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. For purposes of this subdivision, an ownership interest includes the interest the decedent is deemed to own under sections 2036, 2037, and 2038 of the Internal Revenue Code.

(3) During the taxable year that ended before the decedent's death, the trade or business must not have been a passive activity within the meaning of section 469(c) of the Internal Revenue Code, and the decedent or the decedent's spouse must have materially participated in the trade or business within the meaning of section 469(h) of the Internal Revenue Code, excluding section 469(h)(3) of the Internal Revenue Code and any other provision provided by United States Treasury Department regulation that substitutes material participation in prior taxable years for material participation in the taxable year that ended before the decedent's death.

(4) 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.

(5) The property does not consist of cash, cash equivalents, publicly traded securities, or assets not used in the operation of the trade or business. For property consisting of shares of

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Repealed Minnesota Statutes: 14-3919

stock or other ownership interests in an entity, the value of cash, cash equivalents, publicly traded securities, or assets not used in the operation of the trade or business 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.

(6) The decedent continuously owned the property, including property the decedent is deemed to own under sections 2036, 2037, and 2038 of the Internal Revenue Code, for the three-year period ending on the date of death of the decedent. In the case of a sole proprietor, if the property replaced similar property within the three-year period, the replacement property will be treated as having been owned for the three-year period ending on the date of death of the decedent.

(7) For three years following the date of death of the decedent, the trade or business is not a passive activity within the meaning of section 469(c) of the Internal Revenue Code, and a family member materially participates in the operation of the trade or business within the meaning of section 469(h) of the Internal Revenue Code, excluding section 469(h)(3) of the Internal Revenue Code and any other provision provided by United States Treasury Department regulation that substitutes material participation in prior taxable years for material participation in the three years following the date of death of the decedent.

(8) 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 agricultural land and is owned by a person or entity that is either not subject to or is in compliance with section 500.24.

(3) For property taxes payable in the taxable year of the decedent's death, the property is classified as class 2a property under section 273.13, subdivision 23, and is classified as agricultural homestead, agricultural relative homestead, or special agricultural homestead under section 273.124.

(4) The decedent continuously owned the property, including property the decedent is deemed to own under sections 2036, 2037, and 2038 of the Internal Revenue Code, for the three-year period ending on the date of death of the decedent either by ownership of the agricultural land or pursuant to holding an interest in an entity that is not subject to or is in compliance with section 500.24.

(5) The property is classified for property tax purposes as class 2a property under section 273.13, subdivision 23, for three years following the date of death of the decedent.

(6) 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 satisfy the requirement under subdivision 9, clause (7); or 10, clause (5), an additional estate tax is imposed on the property. In the case of a sole proprietor, if the qualified heir replaces qualified small business property excluded under subdivision 9 with similar property, then the qualified heir will not be treated as having disposed of an interest in the qualified 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).