

CHAPTER 8150
DEPARTMENT OF REVENUE
ESTATE AND FIDUCIARY TAX DIVISION
INHERITANCE AND GIFT TAX

8150.0190 CITATIONS AND REFERENCES.
TRANSFERS; CONSIDERATION; RESIDENCY;
COMPROMISES

- 8150.0200 TRANSFERS; TAX IMPOSED AT DEATH.**
8150.0400 CONSIDERATION.
8150.0500 TRANSFERS OF INTANGIBLES HELD OR USED BY NONRESIDENTS.
8150.0600 NONRESIDENT DECEDENTS.
8150.0700 TAXABLE TRANSFERS; COMPROMISES.
- VALUATION**
- 8150.1405 GENERAL RULE OF VALUATION; AUTHORITY.**
8150.1410 VALUATION OF STOCKS AND BONDS.
8150.1415 VALUATION OF INTERESTS IN BUSINESSES.
8150.1420 VALUATION OF NOTES.
8150.1425 VALUATION OF CASH ON HAND OR ON DEPOSIT.
8150.1430 VALUATION OF HOUSEHOLD AND PERSONAL EFFECTS; GENERAL RULE.
8150.1435 VALUATION OF ANNUITIES, LIFE ESTATES, TERMS FOR YEARS, REMAINDERS, AND REVERSIONS.
8150.1440 VALUATION OF CERTAIN LIFE INSURANCE AND ANNUITY CONTRACTS.
8150.1445 VALUATION OF OTHER PROPERTY.

DEDUCTIONS

- 8150.1505 DEDUCTIONS; IN GENERAL.**
8150.1510 DEDUCTION FOR FUNERAL EXPENSES.
8150.1515 PROBATE ADMINISTRATION EXPENSES.
8150.1520 EXPENSES OF LAST ILLNESS UNPAID AT DEATH.
8150.1525 CLAIMS AGAINST THE DECEDENT.
8150.1540 DEDUCTION FOR FEDERAL ESTATE TAX.
8150.1545 APPORTIONMENT OF FEDERAL ESTATE TAX DEDUCTION BETWEEN BENEFICIARIES.
- EXEMPTIONS; RETURNS; COMPUTATION**
- 8150.1600 EXEMPTIONS.**
8150.1800 GENERAL REQUIREMENTS OF RETURN, SCHEDULE, OR LIST.
8150.1900 COMPUTATION OF TAX.
TIME LIMITATIONS; REPRESENTATIVES; LIENS
8150.2000 TIME LIMITATION.
8150.2100 DISCHARGE OF REPRESENTATIVE; RESPONSIBILITY FOR PAYMENT OF TAX.
8150.2200 LIENS FOR INHERITANCE TAXES.
INTEREST ACCRUAL; DOMICILE DISPUTES
8150.2300 ACCRUAL OF INTEREST ON UNPAID INHERITANCE TAXES.
8150.2400 DISPUTED DOMICILE AGREEMENT BETWEEN STATES.

8150.0190 CITATIONS AND REFERENCES.

Citations and references to section or Minnesota Statutes etc. are references to Minnesota Statutes, section.

Statutory Authority: *MS s 291.31 subd 2*

TRANSFERS; CONSIDERATION; RESIDENCY; COMPROMISES

8150.0200 TRANSFERS; TAX IMPOSED AT DEATH.

Subpart 1. In general. An inheritance tax is imposed under Minnesota Statutes, section 291.01, when the transferor is a resident of this state and the transfer is by will or intestate succession. The requirement that the transferor die "possessed" of the property is not restricted to physical possession.

Example: A, a Minnesota resident, dies, leaving taxable property to two minor surviving sons. Nine hours after A's death, one son, a Minnesota resident, dies. The interest in A's estate passing from the dead son to his brother is subject to an inheritance tax under Minnesota Statutes, section 291.01.

Subp. 2. Resident if domiciled. The transferor is a resident for purposes of Minnesota Statutes, section 291.01, if he is domiciled within this state. Whether a transferor will be considered as domiciled within this state will be determined according to the regulations dealing with domicile.

Subp. 3. Situs. Real property belonging to a resident transferor is subject to the inheritance tax only if the situs of the property is within this state.

Subp. 4. Executory contract interest. The interest of a resident vendor in an executory contract (including an earnest money contract and a contract for deed) to sell real property located in this state or elsewhere is intangible personal property for purposes of the inheritance tax.

MINNESOTA RULES 1983

8150.0200 INHERITANCE AND GIFT TAX

6676

Example: X, a Minnesota resident, contracts to sell land located in Montana to Y. X dies before delivery of the deed. The interest of X under this contract is subject to the inheritance tax.

Subp. 5. **Tangible personal property.** Tangible personal property belonging to a resident transferor is subject to the inheritance tax if the permanent physical situs of the property is within this state.

Example: X dies domiciled in Minnesota, leaving a sum of money in United States currency in a bank safe deposit box in Chicago. That money is not subject to an inheritance tax under Minnesota Statutes, section 291.01.

Example: X owns a number of rare paintings permanently housed in museums in New York City, Chicago, and Minneapolis. X dies while domiciled in Minnesota. Only those paintings housed in a museum in Minneapolis are subject to a tax under Minnesota Statutes, section 291.01.

Subp. 6. **Intangible personal property.** Intangible personal property belonging to a resident transferor, whatever situate, is subject to the inheritance tax.

Example: X, domiciled in Minnesota, is a partner in a manufacturing company located in state S. The partnership laws of state S, like the Uniform Partnership Act, do not regard a partner as owning an undivided share of specific partnership assets. Upon the death of X, his interest in the partnership is subject to the inheritance tax under Minnesota Statutes, section 291.01.

Statutory Authority: *MS s 291.31 subd 2*

8150.0400 CONSIDERATION.

Subpart 1. **General rule.** No transfer is a taxable event under Minnesota Statutes, section 291.01, subdivisions 1, 2, and 3 if the transfer is made in exchange for adequate and full consideration in money or money's worth.

Subp. 2. **Adequate and full consideration.** The term "adequate and full consideration" means consideration equal to the full and true value of the property transferred. Where there is a transfer for less than adequate and full consideration, the transferee is taxable (unless the transfer is made in the course of an arm's length business transaction as hereinafter defined), but the transferee is taxable only to the extent of the excess of the full and true value of the property (as of the applicable valuation date) over the consideration in money or money's worth received by the transferor.

Subp. 3. **Money or money's worth.** The term "money or money's worth" means money, or property, services, or other benefits which have an ascertainable value in money.

Example: A bequeaths \$1,000 to B in satisfaction of A's promise to do so if B would give up smoking for the balance of A's life. B's \$1,000 legacy is taxable under this part since A did not receive consideration in money or money's worth notwithstanding the fact that B's conduct in giving up smoking was sufficient consideration to render A's promise enforceable under the laws of contracts.

Example: Prior to their marriage, H and W enter into an antenuptial contract whereby H agrees to bequeath \$100,000 to W by will and W agrees not to assert any further marital property rights in H's estate. H bequeaths the \$100,000 to W in accordance with the contract. W's \$100,000 legacy is taxable under this part since H did not receive consideration in money or money's worth for the bequest.

Subp. 4. **Transfers without donative intent.** A transfer for less than adequate and full consideration in money or money's worth is not taxable under Minnesota Statutes, section 291.01, subdivisions 1, 2, and 3 if it is made in the course of an arm's length business transaction free from donative intent. The term "transfer made in the course of an arm's length business transaction" means a transfer which is made in performance of a business bargain between the

MINNESOTA RULES 1983

6677

INHERITANCE AND GIFT TAX 8150.0500

transferor and the transferee wherein the transferor sought to obtain the fair consideration in money or money's worth in exchange for the transfer.

Example: From 1953 to F's death, F and his brother B each owned 500 of the 1,000 issued shares of X corporation. During this period, the brothers managed the corporation, and both brothers were married and had children. In 1958, F and B agreed that in the event of the death of either, the decedent's family should not continue to own X corporation stock since neither family was in a position to contribute to management and conflict might well arise with respect to matters of corporate policy between the survivor and the family of the deceased.

Accordingly, in 1958, X corporation, F, and B entered into a stock purchase agreement providing as follows: (1) upon the death of the first to die, the corporation would purchase his shares at \$200 per share, (2) the agreed price might be changed by mutual agreement of F, B, and X corporation, and (3) since X corporation's business involved the use of substantial amounts of capital, the price should in any event be adjusted upon the death of the first shareholder to die to reflect changes in book value occurring since the date of the last price determination by the parties.

At the date of the stock purchase agreement, the book value of the X corporation stock was \$150 per share. In 1960, when book value was \$170 per share, the parties mutually agreed upon a price per share of \$230. In 1962, when a book value was \$200 per share and full and true value was \$300 per share, F died and the corporation purchased his 500 shares at a price of \$260 (i.e., the \$230 price fixed in the agreement adjusted to reflect the \$30 per share change in book value since the date of last valuation by the parties.)

Since, upon the facts, it appears that the stock purchase agreement was entered into in the course of an arm's length business transaction between F, B, and X corporation, the transfer of F's shares to X corporation for a price \$20,000 less than their full and true value will not be taxed as a transfer intended to take effect in possession or enjoyment at or after death under this part.

Statutory Authority: *MS s 291.31 subd 2*

8150.0500 TRANSFERS OF INTANGIBLES HELD OR USED BY NONRESIDENTS.

Subpart 1. General rule. Any transfer of intangibles, otherwise taxable under this part, is not subject to the inheritance tax if the intangibles were used or held by a person, or transferred by reason of the death of a person, who was not a resident of this state at the time of his death. This exclusion applies whether the intangibles were used or held in trust or otherwise. However, the transfer of intangible property owned by a resident of this state is taxable regardless of where the intangible property is located.

Subp. 2. Definitions. Definitions:

A. Transfer. The term "transfer" as used in this part, is defined in part 8150.0200.

B. Intangibles. The term "intangibles" refers to personal property of a type which is merely representative or evidence of value. It describes a legal relationship between persons which ordinarily gives the holder a cause of action permitting him to enforce a debt or some other legal right. It includes, but is not limited to, stocks, bonds, notes (whether secured or unsecured), bank deposits, accounts receivable, patents, trademarks, copyrights, good will, life insurance policies, mortgages, and other choses in action. Currency is tangible property; its transfer is taxable only by the state of its situs.

An interest in a Minnesota partnership owned by a nonresident transferor is an "intangible" for purposes of this item since, under Minnesota law, a partner does not have an interest in specific partnership assets.

C. Resident. The term "resident" as used in this part, is defined in part 8150.0200, subpart 2.

Example: A, a Michigan resident, owns 5,000 shares of stock, a controlling interest in X, a Minnesota corporation, and a bank account. The stock certificates have never left Minnesota; A has kept them in a Minneapolis bank in a safe deposit box. A dies and the shares pass to B under A's will. B, A's brother, is the president and managing director of X and a Minnesota resident. This transfer is not subject to the Minnesota inheritance tax; the shares of stock are intangibles and A was a nonresident. The fact that the shares of stock may have acquired a business situs in Minnesota is no longer material.

Statutory Authority: *MS s 291.31 subd 2*

8150.0600 NONRESIDENT DECEDENTS.

Subpart 1. **General rule.** An inheritance tax is imposed under Minnesota Statutes, section 291.01 when the transferor is a nonresident of this state at the time of his death and the transfer is by will, or by intestate succession, as defined in Minnesota Statutes, chapter 525, for real property or in accordance with the intestate law of the domicile of the transferor for tangible personal property.

Subp. 2. **When transferor is a nonresident.** The transferor is a nonresident for purposes of Minnesota Statutes, section 291.01 if he is not domiciled within this state. Whether a transferor will be considered as domiciled within this state will be determined according to the rules dealing with domicile.

Subp. 3. **Real property located in Minnesota.** Real property (including the interest of a vendee under an executory contract for the purchase of real property) located in this state belonging to a nonresident is subject to the inheritance tax.

Example: X, a nonresident of Minnesota, contracts to purchase land located in Minnesota from Y. X dies before receipt of the deed. The interest of X under this contract is subject to the inheritance tax.

Subp. 4. **Nonresident vendor in an executory contract for real property.** The interest of a nonresident vendor in an executory contract for the sale of real property located within this state is not subject to the inheritance tax.

Example: X, a nonresident of Minnesota, contracts to sell land located in Minnesota to Y. X dies before delivery of the deed. The interest of X under this contract is not subject to the inheritance tax.

Subp. 5. **Tangible personal property.** Tangible personal property having permanent physical situs within this state belonging to a nonresident transferor is subject to the inheritance tax.

Subp. 6. **Intangible personal property.** Intangible personal property belonging to a nonresident transferor is not subject to the inheritance tax.

Statutory Authority: *MS s 291.31 subd 2*

8150.0700 TAXABLE TRANSFERS; COMPROMISES.

Subpart 1. **General rule.** The opening clause of Minnesota Statutes, section 291.01 provides that the inheritance tax is imposed upon any transfer of property, real, personal, or mixed, or any interest therein, or income therefrom in trust or otherwise, to any person, association, or corporation, except county, town, or municipal corporations within the state, for strictly county, town, or municipal purposes, in the cases provided in Minnesota Statutes, section 291.01, subdivisions 1 to 5. The term "transfer" as used therein means any transaction which is taxable under such subdivisions.

Subp. 2. **Income of decedent.** No provision is made under this part for forgiveness of inheritance tax upon a transfer of property consisting of items of income in respect of a decedent under Minnesota Statutes, section 290.077.

Therefore, the fact that such items are included in a transfer otherwise taxable under Minnesota Statutes, chapter 291 does not affect the determination of the inheritance tax due in respect of such transfer.

Example: H, executor of the estate of E, deceased, has rendered services as such executor although the amount of H's commissions has not been determined or allowed by the probate court. H dies. Subsequently, the probate court determines and allows such commissions and they are paid to H's personal representative. The transfer of such commissions by will or intestacy to H's testate or intestate beneficiaries is a transfer taxable under this part.

Subp. 3. **Indirect transfers.** If the purchaser of property procures the transfer thereof by the seller to a third party, such transfer is taxable under this part upon the purchaser's death to the extent that the transfer of such property to the third party by the purchaser would have been a taxable transfer under this part.

Example: F, in contemplation of death, purchases Blackacre from X who, at F's request, conveys Blackacre to F's son S. F dies within three years of the date of such conveyance and the consideration which F paid for Blackacre was a material part of F's property. The conveyance of Blackacre by X to S is a taxable transfer from F to S under this part. See Minnesota Statutes, section 291.01, subdivision 1, clause (3) regarding transfers in contemplation of death and the rule regarding such transfers.

Statutory Authority: *MS s 291.31 subd 2*

VALUATION

8150.1405 GENERAL RULE OF VALUATION; AUTHORITY.

Minnesota Statutes, section 291.23 provides that every inheritance, devise, bequest, legacy, transfer, or gift subject to tax under Minnesota Statutes, chapter 291 shall be appraised at its full and true value immediately upon the death of the decedent, or as soon thereafter as may be practicable. However, if its full and true value cannot be ascertained at such time, it shall be appraised at the time the value first becomes ascertainable. This general rule has been modified by the 1963 Minnesota legislature. When death occurs on or after July 1, 1963, and when a federal estate tax return is filed and an election is made under the provisions of the Internal Revenue Code, section 2032, to use the alternate valuation date for federal estate tax purposes, then every inheritance, devise, bequest, legacy, transfer, or gift subject to Minnesota inheritance taxes under the provisions of Minnesota Statutes, chapter 291 shall be valued as of the applicable federal valuation date or dates. The use of the alternate valuation method for purposes of valuing the assets subject to the provisions of Minnesota Statutes, chapter 291 will not be allowed unless the election to so value the federal estate tax return was made in accordance with federal laws and regulations.

The application of the alternate valuation provision is subject to the time limitations imposed by Minnesota Statutes, section 291.21, or Minnesota Statutes, section 291.09, depending upon whether the proceedings before the probate court or the commissioner of revenue were instituted prior to January 1, 1964, or at a date subsequent.

When the proceedings are subject to Minnesota Statutes, section 291.21, Laws of Minnesota 1961, an objection must be filed with the probate court to the valuations shown in the inventory and appraisal within 90 days after filing the inventory with the commissioner. Such objection can be made by either the commissioner or an interested party.

The nonprobate assets, irrespective of whether there are probate proceedings involved or otherwise, will be valued as provided in Minnesota Statutes, section 291.23, unless the time limitation imposed by Minnesota Statutes, section 291.11 precludes a determination of tax based upon the alternate values.

Under the provision of Minnesota Statutes, section 291.11, subdivision 1, paragraph (e), as amended in Laws 1961, chapter 492, section 1, the commissioner and the taxpayer may enter into an agreement to extend the period of limitations imposed by this part and part 8150.1410. Such an agreement will authorize the use of the alternate values where applicable under Minnesota Statutes, section 291.23, Laws of Minnesota 1963.

Minnesota Statutes, section 291.09, subdivision 1, as amended in Laws of Minnesota 1963, chapter 740, section 4, provides that the values shown on the inventory and appraisal, and schedule of nonprobate assets required to be filed with the probate court shall be final unless an objection is entered within 90 days. A similar provision is contained in Minnesota Statutes, section 291.09, subdivision 2 in the case where no probate proceedings are involved.

However, Minnesota Statutes, section 291.09, subdivision 5, reads as follows: "Notwithstanding other provisions of this chapter, when agreed in writing between the commissioner and the representative, values for purposes of the inheritance tax on both probate and non probate assets shall be the same as those finally determined for purposes of the federal estate tax on a decedent's estate." This agreement to follow the federal is authorized by Minnesota Statutes, section 291.11, subdivision 1, paragraph (c).

Thus, the representative of the estate who institutes probate proceedings prior to the expiration of the period authorizing the use of the alternate values under the Internal Revenue Code, section 2032, may insure the use of such values for Minnesota inheritance tax purposes by executing the agreement as provided in Minnesota Statutes, section 291.11.

As stated above, Minnesota Statutes, section 291.23 is effective only in the case where death occurred on or after July 1, 1963.

Statutory Authority: *MS s 291.31 subd 2*

8150.1410 VALUATION OF STOCKS AND BONDS.

Subpart 1. **Based on selling prices.** If there is a market for stocks or bonds, on a stock exchange, in an over-the-counter market, or otherwise, the mean between the highest and lowest quoted selling prices on the valuation date is the fair market value per share or bond. If there were no sales on the valuation date, but there were sales on dates within a reasonable period both before and after the valuation date, the fair market value is determined by taking a weighted average of the means between the highest and lowest sales on the nearest date before and the nearest date after the valuation date. The average is to be weighted inversely by the respective numbers of trading days between the selling dates and the valuation date. For example, assume that sales of stock nearest the valuation date (Friday, June 15) occurred two trading days before (Wednesday, June 13) and three trading days after (Wednesday, June 20) and that on these days the mean sale prices per share were \$10 and \$15, respectively. The price of \$12 is taken as representing the fair market value of a share of the stock as of the valuation date:

$$\frac{((3 \times 10) + (2 \times 15))}{5}$$

If, instead, the mean sale prices per share on June 13 and June 20 were \$15 and \$10, respectively, the price of \$13 is taken as representing the fair market value:

$$\frac{((3 \times 15) + (2 \times 10))}{5}$$

As a further example, assume that the decedent died on Sunday, October 7, and that Saturday and Sunday were not trading days. If sales of stock occurred on Friday, October 5, at mean sale prices per share of \$20 and on Monday,

MINNESOTA RULES 1983

6681

INHERITANCE AND GIFT TAX 8150.1410

October 8, at mean sale prices per share of \$23, then the fair market value per share of stock as of the valuation date is \$21.50. If stocks or bonds are listed on more than one exchange, the records of the exchange where the stocks or bonds are principally dealt in should be employed. In valuing listed securities, the executor should be careful to consult accurate records to obtain values as of the applicable valuation date. If quotations of unlisted securities obtained from brokers, or evidence as to their sale is obtained from officers of the issuing companies, copies of the letters furnishing such quotations or evidence of sale should be attached to the return.

Subp. 2. Based on bid and asked prices. If the provisions of subpart 1 are inapplicable because actual sales are not available during a reasonable period beginning before and ending after the valuation date, the fair market value may be determined by taking the mean between the bona fide bid and asked prices on the valuation date, or if none, by taking a weighted average of the means between the bona fide bid and asked prices on the nearest trading date before and the nearest trading date after the valuation date, if both such nearest dates are within a reasonable period. The average is to be determined in the manner described in subpart 1.

Subp. 3. Based on incomplete selling prices or bid and asked prices. If the provisions of subparts 1 and 2 are inapplicable because no actual sale prices or bona fide bid and asked prices are available on a date within a reasonable period before the valuation date, but such prices are available on a date within a reasonable period after the valuation date, or vice versa, then the mean between the highest and lowest available sale prices or bid and asked prices may be taken as the value.

Subp. 4. When selling prices or bid and asked prices are unavailable. If the provisions of subparts 1, 2, and 3 are inapplicable because actual sale prices and bona fide bid and asked prices are lacking, then the fair market value is to be determined by taking the following factors into consideration:

A. in the case of corporate or other bonds, the soundness of the security, the interest yield, the date of maturity, and other relevant factors; and

B. in the case of shares of stock, the company's net worth, prospective earning power and dividend-paying capacity, and other relevant factors.

Some of the "other relevant factors" referred to in items A and B are: the good will of the business; the economic outlook in the particular industry; the company's position in the industry and its management; and the values of securities of corporations engaged in the same or similar lines of business which are listed on a stock exchange. However, the weight to be accorded such comparisons or any other evidentiary factors considered in the determination of a value depends upon the facts of each case. Complete financial and other data upon which the valuation is based should be submitted with the return, including copies of reports of any examinations of the company made by accountants, engineers, or any technical experts as of or near the applicable valuation date.

Subp. 5. Pledged securities. The full value of securities pledged to secure an indebtedness of the decedent is included in the gross estate. If the decedent had a trading account with a broker, all securities belonging to the decedent and held by the broker at the date of death must be included at their fair market value as of the applicable valuation date. Securities purchased on margin for the decedent's account and held by a broker must also be returned at their fair market value as of the applicable valuation date. The amount of the decedent's indebtedness to a broker or other person with whom securities were pledged is allowed as a deduction from the gross estate in accordance with the provisions of Minnesota Statutes, section 291.07 and the rules applicable thereto.

Subp. 6. Securities subject to an option or contract to purchase. Another person may hold an option or a contract to purchase securities owned by a decedent at the time of his death. The effect, if any, that is given to the option

or contract price in determining the value of the securities for estate tax purposes depends upon the circumstances of the particular case. Little weight will be accorded a price contained in an option or contract under which the decedent is free to dispose of the underlying securities at any price he chooses during his lifetime. Such is the effect, for example, of an agreement on the part of a shareholder to purchase whatever shares of stock the decedent may own at the time of his death. Even if the decedent is not free to dispose of the underlying securities at other than the option or contract price, such price will be disregarded in determining the value of the securities unless it is determined under the circumstances of the particular case that the agreement represents a bona fide business arrangement and not a device to pass the decedent's shares to the natural objects of his bounty for less than an adequate and full consideration in money or money's worth.

Subp. 7. Stock sold ex-dividend. In any case where a dividend is declared on a share of stock before the decedent's death but payable to stockholders of record on a date after his death and the stock is selling "ex-dividend" on the date of the decedent's death, the amount of the dividend is added to the ex-dividend quotation in determining the fair market value of the stock as of the date of the decedent's death.

Example: Dividend of \$1 declared January 1, 1962 to be paid to stockholders of record on January 5, 1962 and actually received January 12, 1962. The \$1 dividend is included in the gross estate as a separate asset because the record date is prior to the date of death.

Example: Dividend of \$1 declared January 4, 1962 to be paid to stockholders of record on January 12, 1962 and actually received by the estate on January 15, 1962. The stock was selling ex-dividend on date of death. The dividend is added to the stock quotation and is included in the gross estate. Although the stockholder of record date is after the date of death the dividend is included because the fair market value of the stock is not accurately reflected when it sells ex-dividend.

Statutory Authority: *MS s 291.31 subd 2*

8150.1415 VALUATION OF INTERESTS IN BUSINESSES.

Subpart 1. Fair market value. The fair market value of an interest of a decedent in a business, whether a partnership or a proprietorship, is the net amount which a willing purchaser, whether an individual or a corporation, would pay for the interest to a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. The net value is determined on the basis of all relevant factors including:

- A. a fair appraisal as of the applicable valuation date of all the assets of the business, tangible and intangible, including good will;
- B. the demonstrated earning capacity of the business; and
- C. the other factors set forth in Inheritance Tax 100, (d) and (f) relating to the valuation of corporate stock, to the extent applicable.

Subp. 2. Good will. Special attention should be given to determining an adequate value of the good will of the business in all cases in which the decedent has not agreed, for an adequate and full consideration in money or money's worth, that his interest passes at his death to, for example, his surviving partner or partners. Complete financial and other data upon which the valuation is based should be submitted with the return, including copies of reports of examinations of the business made by accountants, engineers, or any technical experts as of or near the applicable valuation date.

Statutory Authority: *MS s 291.31 subd 2*

Note: The cross-reference in subpart 1, item C cannot be converted to a Minnesota Rules number because Inheritance Tax 100 has been repealed.

MINNESOTA RULES 1983

6683

INHERITANCE AND GIFT TAX 8150.1435

8150.1420 VALUATION OF NOTES.

The fair market value of notes, secured or unsecured, is presumed to be the amount of unpaid principal, plus interest accrued to the date of death, unless the executor establishes that the value is lower or that the notes are worthless. However, items of interest shall be separately stated on the estate tax return. If not returned at face value, plus accrued interest, satisfactory evidence must be submitted that the note is worth less than the unpaid amount (because of the interest rate, date of maturity, or other cause), or that the note is uncollectible, either in whole or in part (by reason of the insolvency of the party or parties liable, or for other cause), and that any property pledged or mortgaged as security is insufficient to satisfy the obligation.

Statutory Authority: *MS s 291.31 subd 2*

8150.1425 VALUATION OF CASH ON HAND OR ON DEPOSIT.

The amount of cash belonging to the decedent at the date of his death, whether in his possession or in the possession of another, or deposited with a bank, is included in the decedent's gross estate. If bank checks outstanding at the time of the decedent's death and given in discharge of bona fide legal obligations of the decedent incurred for an adequate and full consideration in money or money's worth are subsequently honored by the bank and charged to the decedent's account, the balance remaining in the account may be returned, but only if the obligations are not claimed as deductions from the gross estate.

Statutory Authority: *MS s 291.31 subd 2*

8150.1430 VALUATION OF HOUSEHOLD AND PERSONAL EFFECTS; GENERAL RULE.

The fair market value of the decedent's household and personal effects is the price which a willing buyer would pay to a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. A room by room itemization of household and personal effects is desirable. All the articles should be named specifically, except that a number of articles contained in the same room, none of which has a value in excess of \$100, may be grouped. A separate value should be given for each article named. In lieu of an itemized list, the executor may furnish a written statement, containing a declaration that it is made under penalties of perjury, setting forth the aggregate value as appraised by a competent appraiser or appraisers of recognized standing and ability, or by a dealer or dealers in the class of personalty involved.

Statutory Authority: *MS s 291.31 subd 2*

8150.1435 VALUATION OF ANNUITIES, LIFE ESTATES, TERMS FOR YEARS, REMAINDERS, AND REVERSIONS.

The fair market value of annuities, life estates, terms for years, remainders, and reversions is their present value, determined under tables issued by the commissioner of internal revenue. The use of these tables is authorized by Minnesota Statutes, section 291.11, subdivision 2. For actual calculations see "Actuarial Values for Estate and Gift Tax." This pamphlet may be purchased at a nominal sum from the Superintendent of Documents, United States Government Printing Office, Washington, D.C.

Statutory Authority: *MS s 291.31 subd 2*

8150.1440 VALUATION OF CERTAIN LIFE INSURANCE AND ANNUITY CONTRACTS.

Subpart 1. **General rule.** The value of a contract for the payment of an annuity, or an insurance policy on the life of a person other than the decedent, issued by a company regularly engaged in the selling of contracts of that character is established through the sale by that company of comparable contracts. An annuity payable under a combination annuity contract and life insurance policy on the decedent's life (e.g., a "retirement income" policy with death benefit) under which there was no insurance element at the time of the decedent's death is treated like a contract for the payment of an annuity for purposes of this section.

Subp. 2. **Long-term contracts.** As valuation of an insurance policy through sale of comparable contracts is not readily ascertainable when, at the date of the decedent's death, the contract has been in force for some time and further premium payments are to be made, the value may be approximated by adding to the interpolated terminal reserve at the date of the decedent's death the proportionate part of the gross premium last paid before the date of the decedent's death which covers the period extending beyond that date. If, however, because of the unusual nature of the contract such an approximation is not reasonably close to the full value of the contract, this method may not be used.

Subp. 3. **Examples.** The application of this section may be illustrated by the following examples. In each case involving an insurance contract, it is assumed that there are no accrued dividends or outstanding indebtedness on the contract.

A. X purchased from a life insurance company a joint and survivor annuity contract under the terms of which X was to receive payments of \$1,200 annually for his life and, upon X's death, his wife was to receive payments of \$1,200 annually for her life. Five years after such purchase, when his wife was 50 years of age, X died. The value of the annuity contract at the date of X's death is the amount which the company would charge for an annuity providing for the payment of \$1,200 annually for the life of a female 50 years of age.

B. Y died holding the incidents of ownership in a life insurance policy on the life of his wife. The policy was one on which no further payments were to be made to the company (e.g., a single premium policy or a paid-up policy). The value of the insurance policy at the date of Y's death is the amount which the company would charge for a single premium contract of the same specified amount on the life of a person of the age of the insured.

C. Z died holding the incidents of ownership in a life insurance policy on the life of his wife. The policy was an ordinary life policy issued nine years and four months prior to Z's death and at a time when Z's wife was 35 years of age. The gross annual premium is \$2,811 and the decedent died four months after the last premium due date. The value of the insurance policy at the date of Z's death is computed as follows:

Terminal reserve at end of tenth year	\$14,601.00
Terminal reserve at end of ninth year	12,965.00
	<hr/>
Increase	1,636.00
One-third of such increase (Z having died four months following the last preceding premium due date) is	\$ 545.33
Terminal reserve at end of ninth year	12,965.00
	<hr/>
Interpolated terminal reserve at date of Z's death	13,510.33

MINNESOTA RULES 1983

6685

INHERITANCE AND GIFT TAX 8150.1510

Two thirds of gross premium ($2/3 \times \$2,811$)	1,874.00
Value of the insurance policy	<u>\$15,384.33</u>

Statutory Authority: *MS s 291.31 subd 2*

8150.1445 VALUATION OF OTHER PROPERTY.

The valuation of any property not specifically described in this chapter shall be made in accordance with the general principles set forth in parts 8150.1405 to 8150.1440.

Statutory Authority: *MS s 291.31 subd 2*

DEDUCTIONS

8150.1505 DEDUCTIONS; IN GENERAL.

Subpart 1. Authority. Minnesota Statutes, section 291.07, subdivision 1, lists the deductions allowable when an estate has been submitted to probate. Minnesota Statutes, section 291.07, subdivision 2, lists the deductions allowable where an estate has not been submitted to probate. There may be instances where the deductions allowable will be permitted to be taken against nonprobate assets, although there are probate assets available for payment of the charges. In other instances, deductions for such charges may only be allowed against probate assets to the extent of the probate assets. Each of these deductions will be treated as a separate rule.

Subp. 2. Evidence. All inheritance tax deductions must be supported by evidence sufficient to establish both the validity and the correctness thereof, if such evidence is requested by the probate court in the case of probate assets, or the commissioner in the case of nonprobate assets.

Subp. 3 Determination. Under Minnesota Statutes, section 291.09, subdivision 1, paragraph (c), the determination of inheritance tax deductions in respect of probate assets is to be made by the probate court, subject to the right of the commissioner to object to such determination as therein provided. The determination of deductions in respect of nonprobate assets is to be made by the commissioner under Minnesota Statutes, section 291.09, subdivision 2, paragraph (b). Appeals from a determination by the probate court or by the commissioner may be taken as provided by law.

Statutory Authority: *MS s 291.31 subd 2*

8150.1510 DEDUCTION FOR FUNERAL EXPENSES.

Subpart 1. General rule. Funeral expenses are primarily payable out of probate assets since they are estate liabilities. Therefore, to the extent that there are probate assets which can be applied to the payment of funeral expenses, consistent with the priority established under Minnesota Statutes, section 525.44, such expenses must be paid out of probate assets in order to qualify for the inheritance tax deduction.

Example: H's will bequeathed his entire probate estate to W, his wife. In addition, H and his son, S, were the joint owners of bank accounts in the amount of \$50,000. As H had furnished all the consideration for these bank accounts, the entire \$50,000 is taxable to S. S paid H's funeral expenses of \$2,000. As there are sufficient probate assets from which to pay such funeral expenses, S will not be allowed a deduction against the nonprobate assets (the \$50,000 in bank deposits) transferred to him at H's death. However, if S files a claim for reimbursement against the probate estate, and if such reimbursement is made to him, the deduction will be allowed against the probate assets passing to W.

Subp. 2. When probate assets insufficient. Where the probate assets available are insufficient to pay the funeral expenses, the deduction will be allowed to a beneficiary of nonprobate assets provided such beneficiary actually

pays the difference between the funeral expenses and the amount of probate assets available for such payment.

Example: The probate assets available for funeral expenses are \$500. Expenses to be paid are \$1,200. B, who received \$30,000 in taxable insurance proceeds, payable at death of decedent, makes payment of the deficit of \$700. B will be allowed a deduction of \$700 against the insurance proceeds taxable to him.

Subp. 3. **Incidental expenses.** Expenditures, incident to the funeral service, such as undertakers' charges, clergymen's fees, expenses for music or flowers, cemetery lots, tombstones (where authorized by the probate court), charges for preparing the grave site, etc., are allowable. Expenses incurred for purposes not directly connected with the funeral service, for example, the cost of meals and food served after the funeral, or expenses of travel to the funeral, are not allowable. The cost of the limousine furnished by the undertaker for the use of the family does not constitute an expense of traveling to the funeral.

Subp. 4. **Social security payment.** If any beneficiary, other than the surviving spouse, is the recipient of a social security payment for funeral expenses, the amount of the inheritance tax deduction for funeral expenses shall be reduced to the extent of such payment received.

Statutory Authority: *MS s 291.31 subd 2*

8150.1515 PROBATE ADMINISTRATION EXPENSES.

Subpart 1. **Deducted ratably.** Probate administration expenses are only deductible for inheritance tax purposes to the extent that they are paid out of probate assets, and the deduction for probate administration expenses is available ratably to those beneficiaries whose interest in the decedent's estate are reduced by such payments.

Subp. 2. **Expenses.** The following items are regarded as probate administration expenses and are allowable:

A. appraisers' fees, preparation of orders, certified copies, bond premiums, expenses incurred by the representative or his agent, postage, stock transfer expense, and expenses incident to sale of real or personal property in the hands of the representative, where a sale is necessary to pay specific legacies or other expenses of administration;

B. compensation of representative's and attorney's fees as provided by statute: "Every representative...shall have such compensation for his services as the court shall deem just and reasonable."

The fact that the representative is himself a lawyer does not imply that in addition to conducting administration of the estate, he shall perform any required legal service gratis. An executor who champions a will in good faith and for just cause for the purpose of having it admitted to probate, whether successful or not, shall be allowed out of the estate his necessary expenses and disbursements in such proceeding, together with just compensation for his services and those of his attorneys, as the court shall deem just and proper. An attorney performing services for the estate at the instance of the representative shall have such compensation therefor out of the estate as the court shall deem just and reasonable. If any person successfully opposes the allowance of any will or codicil, he is allowed his expenses and compensation for services of himself and attorney. Where a controversy is settled, which does not result in the disallowance of the will or of a disputed codicil, attorney's fees incurred by the claimant shall not be allowed as a deduction.

Example: K died testate leaving the major portion of his estate to four charities. His only heir at law was an aunt, who subsequent to his decease died intestate in Illinois, survived by her husband and child. Had K died intestate, his entire estate would have passed to his aunt and would have been an asset in her estate at her death. Following expiration of the time for appeal, the

MINNESOTA RULES 1983

6687

INHERITANCE AND GIFT TAX 8150.1515

representative of the estate of the deceased aunt hired counsel to contest the will of K, under a contingent fee arrangement whereby the attorneys were to receive 50 percent of any amount recovered by reason of the will contest. A compromise agreement was reached whereby the four charities which were beneficiaries under the will of K agreed to contribute the sum of \$12,500 each to the representative of the deceased aunt's estate. The settlement was approved by the probate court, and an order was made for a partial distribution to the four charities of amounts required to pay the administrator of the deceased aunt's estate. As K's will was not disallowed, the entire \$50,000 was taxed to the deceased aunt without any deduction for attorneys' fees.

C. In general, where assets are sold during administration at less than the values as determined under the provisions of Minnesota Statutes, sections 291.09 and 291.23 in order to raise cash to pay specific legacies or to defray the expenses of administration and death taxes, in those cases where the required funds would otherwise be unavailable, any loss resulting from such disposition is an allowable deduction subject to the limitations of subitems (1) and (2). However, it should be noted that Minnesota Statutes, section 290.01, subdivision 20, paragraph (d), does not allow such a loss in computing the taxable income of the estate unless there is filed a waiver of the right to take the deduction for inheritance tax purposes. Under Minnesota Statutes, section 525.63, the real estate is subject to payment of expenses of administration only where the personal property is insufficient for this purpose.

Example: X's will contained bequests totalling \$100,000 in cash to certain designated beneficiaries. All death taxes are to be paid from residue. After taking into account the cash on hand, the executor determined that he would require an additional \$300,000 in order to pay the specific legacies and to defray the expenses of administration. He realized \$300,000 on the sale of assets which had been valued for inheritance tax purposes at \$315,000. The \$15,000 difference between the appraised value of the assets so disposed, and the amount realized is an allowable deduction.

(1) Where assets are sold in order to defray expenses of administration, and the amount realized is greater than the amount required, the allowable amount of any loss that may be incurred thereby shall be computed by multiplying the amount of the loss so incurred by a fraction, the numerator of which is the amount required, and the denominator is the amount realized.

Example: X's will contains bequests totalling \$100,000 in cash to certain designated beneficiaries. All death taxes are to be paid from residue. After taking into account the cash on hand, the executor determined that he required an additional \$300,000 in order to pay the specific legacies and to defray the expenses of administration. He realized \$325,000 on the sale of assets which had been valued for inheritance tax purposes at \$338,000, thus incurring a loss of \$13,000. The allowable deduction is computed as follows:

Amount required \$300,000 x \$13,000 (loss) = \$12,000

Amount realized 325,000 (deduction allowed)

(2) Where assets must be sold to raise expenses of administration, and such assets cannot be subdivided or sold piecemeal, the loss represented by the difference between the appraised value for inheritance tax purposes and the proceeds of such sale will be allowed in its entirety providing there is a reasonable relationship between the asset so disposed and the amount of cash required for the purpose of administration. The following examples are illustrative:

Example: The expenses of administration of the estate of X are \$15,000. In order to realize sufficient cash, the executor sells an apartment house which is part of the residue of \$35,000 and incurs a loss of \$5,000. The loss is deductible as an expense of administration.

Example: The expenses of administration of the estate of X are \$25,000. Although there are assets available in the residue, the sale of which would yield the approximate amount required, the executor sells Blackacre which has an appraised value of \$210,000 for \$150,000. The allowable loss is \$10,000 computed as follows:

$$\text{Amount required } \$ 25,000 \times \$60,000 \quad (\text{loss incurred}) = \$10,000$$

$$\text{Amount realized } \frac{150,000}{\quad} \quad (\text{deduction allowed})$$

(3) Where part of the decedent's estate consists of assets not subject to the provisions of Minnesota Statutes, chapter 291, the allowable loss incurred by the sale of assets required to raise the funds necessary to defray the expenses of administration shall be determined by multiplying the amount of the loss by a fraction, the numerator of which is the amount required for Minnesota expenses of administration, and the denominator, the total amount realized.

Example: The value of X's estate is equally divided between property taxable by Minnesota and real estate having its situs outside of Minnesota. The expenses of administration assignable to Minnesota amount to \$40,000, while the expenses outside Minnesota are \$10,000. There are no specific legacies payable from the estate subject to Minnesota inheritance tax. Federal estate taxes total \$100,000, half of which are attributable to the property taxable to Minnesota. There is no marital deduction. In order to pay the expenses of administration, the executor realizes \$150,000 on the sale of assets appraised at \$180,000. The \$18,000 loss allowable as a deduction is computed as follows:

$$\$40,000 + 50,000 \quad (1/2 \text{ the federal estate tax}) \times \$30,000 =$$

$$\frac{\$150,000}{\quad} \quad \$18,000 \quad (\text{allowable deduction})$$

(4) Where personal property in an amount equal to requirements is sold at a loss, and the proceeds so realized are used for the required purposes, and thereafter, sales of other personal property are made at a gain, the loss so incurred shall not be offset against the subsequent gain.

Example: The expenses of administration of the estate of D are \$30,000. In order to realize sufficient funds, shares of X stock valued at \$40,000 are sold at \$30,000. The proceeds so realized are then utilized to pay the required expenses. Subsequent to the payment of such expenses, Y stock, valued at \$50,000, is sold at \$70,000. The executor is not required to offset the \$10,000 loss allowable as an expense of administration on his inheritance tax return against the gain realized of the sale of Y stock.

Example: Same facts as the above example, however, the expenses of administration are paid subsequent to the sale of both X and Y stocks. Under these circumstances, the loss will not be allowed as an expense of administration on the Minnesota inheritance tax return.

Statutory Authority: *MS s 291.31 subd 2*

8150.1520 EXPENSES OF LAST ILLNESS UNPAID AT DEATH.

Expenses of last illness are allowable as a deduction if unpaid at death. Inasmuch as such expenses are a direct charge against the assets of the decedent (probate assets), they are primarily payable out of the probate estate, consistent with the provisions of Minnesota Statutes, section 525.44. Should the probate assets be insufficient to pay such expenses, a beneficiary of nonprobate assets will be entitled to take the deduction provided he has actually paid such expenses of illness subsequent to decedent's death. The commissioner may request proof of payment by such beneficiary before allowing the deduction.

Unreimbursed disbursements for expenses of illness paid by any person prior to death of decedent constitute claims against the decedent which must be filed with the probate court pursuant to Minnesota Statutes, section 525.41 et seq.,

MINNESOTA RULES 1983

6689

INHERITANCE AND GIFT TAX 8150.1525

Minnesota Statutes, section 291.07, and part 8150.1525.

Statutory Authority: *MS s 291.31 subd 2*

8150.1525 CLAIMS AGAINST THE DECEDENT.

Subpart 1. Claims allowed. The inheritance tax deduction for claims against the decedent is confined to claims "which have been properly filed and allowed as such by the probate court and duly paid." Thus, claims are only deductible for inheritance tax purposes to the extent that they are paid out of probate assets. The determination of the inheritance tax in respect of claims against the decedent is to be made by the probate court subject to the right of the commissioner to object to such determination.

Subp. 2. Claim objection. If the commissioner objects to a claim against the decedent represented by services purported to have been performed by the claimant in the past, the claimant may, if he so chooses, submit evidence to the commissioner prior to the hearing on the objections before the probate court. See Minnesota Statutes, section 291.09, subdivision 1, paragraph (c). The commissioner will give weight to an affidavit by claimant that, to the extent of the amount of the claim allowed and paid to him, he will include such income on his Minnesota income tax return.

Subp. 3. Antenuptial agreement. An antenuptial agreement, under which the surviving spouse is entitled to a specific amount or a specified share of the estate, does not constitute a claim against the decedent, but is a contract which substitutes the terms contained therein for the statutory rights of the surviving spouse pursuant to Minnesota Statutes, section 525.15.

Subp. 4. Spouse claim. Any property claimed by the surviving spouse under Minnesota Statutes, section 525.16 clauses (2) and (3), does not represent a claim against the decedent.

Subp. 5. Promise. A promise by the decedent to pay a specified amount at some future date does not represent a claim against the decedent unless given in return for "adequate and full consideration in money or money's worth." The commissioner will enter his objections to such claims, unless made for adequate consideration.

Subp. 6. Claims duly paid. Laws of Minnesota 1965, chapter 249, added the phrase "and duly paid" to Minnesota Statutes, section 291.07, clause (4). Thus, claims have to be paid in a proper manner, that is, properly as distinguished from mere form, both according to law and to substance. Payment of a claim that does not result in a diminution of the amount taxable to one or more of the beneficiaries does not constitute a claim "duly paid." A voluntary contribution made by a beneficiary of nonprobate assets to the representative in order to furnish the latter with sufficient funds to pay claims properly filed and allowed with the probate court will be allowed by the commissioner as a deduction against the nonprobate assets passing to such beneficiary.

Subp. 7. Mortgages, encumbrances, etc. Minnesota Statutes, section 525.331 provides that all encumbrances, liens, and charges against any items of inventory in the estate of the decedent shall be deducted from the value of the property in order to arrive at the net value. Although Minnesota Statutes, chapter 291 does not contain a similar provision, the commissioner does permit the beneficiary to deduct from the value of the nonprobate property passing to him the mortgages, liens, and charges against such property, in order to treat the taxation of such property in the same manner as probate property is treated.

If the encumbrance, lien, or charge against an item of property in the estate of the decedent is in excess of the value of the property, the excess shall be considered a claim against the decedent, provided he is personally liable for such deficit.

If the decedent was personally liable for the amount of the mortgage and at the date of his death the value of the property was in excess of the amount so owed, the mortgage note does not constitute a claim against the decedent. Consequently, if the representative pays the entire amount due on the mortgage, the amount so paid will be disallowed as a claim against the decedent.

Example: H, at his death, held Blackacre as homestead in joint tenancy with W, his wife. At the inheritance tax valuation date, the fair market value thereof was \$40,000, and the property was subject to a \$20,000 mortgage in favor of X bank. He had signed a note imposing personal liability on him for the amount of the mortgage. The representative paid the \$20,000 mortgage. The \$20,000 so paid does not represent a claim against the decedent as the value of Blackacre is in excess of the encumbrance. Blackacre passed to the surviving spouse subject to the mortgage, consequently, the value of Blackacre, for inheritance tax purposes, was reduced by the amount of the mortgage. The effect of the representative's actions is to substitute for \$20,000 in cash given to X bank, a \$20,000 mortgage which now becomes an asset of the estate.

Statutory Authority: *MS s 291.31 subd 2*

8150.1540 DEDUCTION FOR FEDERAL ESTATE TAX.

Subpart 1. Allowed. The federal estate tax is an allowable deduction. The amount to be allowed is the amount claimed on the inheritance tax return filed pursuant to Minnesota Statutes, section 291.09 subject to redetermination within the statutory period established by this section or within 90 days after final determination of the federal tax liability if form IG-3, Agreement to Follow Determination and Extend Limitations on Redetermination or Adjustment of Inheritance Tax, has been executed by the taxpayer and the commissioner. The deduction will be allowed in full unless subject to apportionment in those cases where installment payments are permitted by the Internal Revenue Service, although the period of payment may extend beyond the date when final determination of the Minnesota inheritance tax liability is made. However, penalties or interest accrued on unpaid federal estate taxes are not allowable.

Example: The federal estate tax liability of the estate of X is \$100,000. The representative pays \$30,000 in 1969 and is granted permission to pay the balance of \$70,000 in ten annual installments. On his Minnesota inheritance tax return, the representative is allowed \$100,000 as a deduction for federal estate taxes.

Subp. 2. Computation. Minnesota Statutes, section 291.07, clause (4) prescribes the method of determining the amount of federal estate taxes deductible where the estate consists of both taxable and nontaxable property.

A. Subject to the specifications provided below, the amount of federal estate tax allowable as a deduction is computed as follows:

(1) The net estate taxable to Minnesota (see subitem (4)) less transfers to qualified exempt institutions and less the allowable marital deduction, to the extent paid out of or attributable to Minnesota property, shall be the numerator of a fraction.

(2) The denominator of the fraction shall be the value of the net estate everywhere as defined in subitem (4) less transfers to qualified exempt organizations and less the marital deduction allowed for federal purposes.

(3) The ratio of the fraction so derived shall be multiplied by the federal estate tax due and payable to the United States Treasury.

(4) The net estate is defined as the gross value of the estate on the applicable valuation date reduced by any unpaid mortgage on, or any indebtedness in respect of, property where the decedent's interest, undiminished by such mortgage or indebtedness, is included in the value of the gross estate.

Example: X, a Minnesota decedent, leaves an estate consisting of a home in Minnesota valued at \$50,000, \$950,000 in intangible property, and Wisconsin

MINNESOTA RULES 1983

6691

INHERITANCE AND GIFT TAX 8150.1545

real estate valued at \$500,000. The will specifically bequeathes the Wisconsin property to S, a son, and gives the widow one-half of the adjusted federal gross. The balance of the residue goes to S. In addition, a specific bequest of \$20,000 is made to the University of Minnesota, and a specific bequest of \$5,000 is made to the University of Wisconsin. There are no mortgages or encumbrances against the Minnesota property. There is a \$100,000 mortgage on the Wisconsin property. Expenses of administration are \$200,000. The numerator is calculated as follows:

Minnesota estate		\$1,000,000
*Less marital deduction	\$600,000	
Less bequests to Universities of Minnesota and Wisconsin	25,000	
		625,000
Net estate in Minnesota (numerator)		\$ 375,000

*As the Wisconsin property has been specifically devised, the marital deduction is allocated on the basis of Minnesota property.

The denominator is calculated as follows:

Gross estate		\$1,500,000
Less mortgage on Wisconsin property		100,000
		\$1,400,000
Less marital deduction	\$600,000	
Less exempt bequests	25,000	
		625,000
Net estate (denominator)		\$ 775,000

The federal estate tax allowable as a Minnesota deduction is calculated as follows:

$$\frac{375,000 \text{ (numerator)}}{775,000 \text{ (denominator)}} \times \$137,950 \text{ (federal estate tax)} = \$66,750$$

B. In those cases where credit for state death taxes, credit for federal gift taxes, credit for taxes on prior transfers or credit for foreign death taxes is allowed (see page 1 of federal form 706), the ratio derived in item A shall be applied to the federal estate tax liability after giving effect to such credits.

Statutory Authority: *MS s 291.31 subd 2*

8150.1545 APPORTIONMENT OF FEDERAL ESTATE TAX DEDUCTION BETWEEN BENEFICIARIES.

Subpart 1. **General rule.** Pursuant to Minnesota Statutes, sections 525.521 to 525.527, commonly referred to as the Federal Estate Tax Apportionment Act, federal estate taxes are subject to apportionment among the several beneficiaries unless there is a directive to the contrary in the will or in any other controlling instrument. Pursuant to Minnesota Statutes, section 525.521, the burden of the federal estate tax is spread proportionately among the persons interested in a decedent's estate unless the testator has directed otherwise, either by will or by

some direction given in a nontestamentary instrument. This section is applicable to both residents and nonresidents alike pursuant to other provisions discussed below.

Subp. 2. Temporary interests. Pursuant to Minnesota Statutes, section 525.522, absent a direction to the contrary, no apportionment shall take place between the persons taking an interest in income, or an estate for years, or a life estate, or any other temporary interest in the property or fund. In such cases, the federal estate tax, in respect of such property or fund, shall be paid out of the corpus or principal of such property or fund before the value of the life estate or other temporary interest is determined for purpose of taxation. The provisions of this section shall be applicable even though the holder of the temporary interest is given rights to the corpus. Unless otherwise provided, a person entitled to an annuity shall not be relieved of the burden of his proportionate share of the federal estate tax (see last sentence of Minnesota Statutes, section 525.522).

Subp. 3. Method of apportionment. Minnesota Statutes, section 525.523 sets out the method of apportionment in the absence of directions to the contrary. Apportionment shall be made in the proportion that the value of the property or interest received by each of the persons benefited bears to the total value of the property received by all persons benefited. The values, as finally determined for federal estate tax purposes, shall be the values to be used as a basis for the apportionment. Exemptions or deductions allowed under federal law by reason of the relationship of any person to the decedent or by reason of the charitable purpose of the gift shall inure to the benefit of the person standing in such relationship or receiving such charitable gift. Any credit for property previously taxed, or credit for federal gift taxes or credit for foreign death taxes shall inure to the benefit of all persons benefited, and the tax to be apportioned shall be the tax after due allowance for such credits. Although Minnesota Statutes, section 525.523 provides for the apportionment of interest resulting from late payment of the tax, the amount of interest expense so apportioned to each of the beneficiaries is not a deductible expense for inheritance tax purposes. The provisions of this section relating to discounts allowed for prepayment of the tax are not applicable, as the federal law does not allow a discount for such prepayments.

Subp. 4. Apportionment by will. Pursuant to Minnesota Statutes, section 525.524, any direction as to apportionment or nonapportionment of the tax, whether contained in a will or in a nontestamentary instrument, shall be limited in its operation to the property conveyed by such instrument, unless such will or instrument otherwise directs.

Subp. 5. Recovery of share. Pursuant to Minnesota Statutes, section 525.525, when the fiduciary (meaning the executor, representative, or trustee) who is required to pay the federal estate tax, does not hold any property distributable to a beneficiary to whom part of the tax is apportioned, the fiduciary is entitled, and it shall be his duty, to recover from the person benefited or from the person in possession of such property such person's proper share of the tax plus interest or penalty due. However, as noted above, neither interest nor penalties are allowable as a deduction for Minnesota inheritance tax purposes. The probate court may, by its order, charge such payment against the share or interest of the person benefited, where assets properly distributable to such person, are in the hands of the fiduciary required to pay the tax. If the amount of the tax cannot be collected, the probate court shall determine the manner of charging the amount unrecovered; however, the total amount of federal tax allowable as a deduction will be limited to the amount allowed under Minnesota Statutes, section 291.07.

MINNESOTA RULES 1983

6693

INHERITANCE AND GIFT TAX 8150.1545

Subp. 6. Property withheld. Minnesota Statutes, section 525.526 provides that the fiduciary may withhold distribution of any property to a beneficiary until the tax apportioned to such beneficiary has been paid. This authority to withhold property extends to a case where the tax apportioned has not yet been determined; however, this section does provide that such property may be released if security adequate to insure ultimate payment is available.

Subp. 7. Probate court apportions. Minnesota Statutes, section 525.527 authorizes the probate court to issue the necessary orders apportioning the tax. The authority so granted by this section extends to the apportionment of the tax against a beneficiary taking nontestamentary property. For the purpose of this part, nontestamentary property is deemed to be identical to nonprobate assets as defined in Minnesota Statutes, section 291.005, relating to disclaimer procedures. The following examples are illustrative:

Example: X, by will, bequeathes his entire residuary estate in trust to pay the income therefrom to S for life with the remainder over to D. The value of the residue, after payment of all expenses of administration, is \$200,000. In addition, S is the beneficiary of \$100,000 taxable insurance proceeds on X's life. X's will is silent regarding the payment of death taxes. Accordingly, the federal tax will be apportioned in the following manner:

$$\begin{array}{r} \text{(Value received by S)} \quad \$100,000 \times \$59,100 \text{ (federal tax)} = \\ \hline 300,000 \end{array}$$

(Total value of all
property received by all
beneficiaries)
\$19,700 apportioned to S

The remaining \$39,400 of federal tax is apportioned to the trust. Two points should be noted: (1) the value received by S does not include the value of S's life estate (see Minnesota Statutes, section 525.222); and (2) The total value of the property received by all beneficiaries is based on the amount of the total estate subject to tax but before applying the statutory exemption.

Example: At X's death, S, his sister, is to receive \$12,000 per month for life, and a specific bequest of \$10,000. The remainder of the estate, including the remainder value of the trust from which S receives the annuity, is payable to C. Value of the total estate after payment of all expenses of administration is \$300,000. The will is silent regarding payment of death taxes. For purposes of this example, the value of the annuity is assumed to be \$120,000, and the total federal tax is assumed to be \$59,100. The federal estate tax will be apportioned as follows:

Annuity value to S	\$120,000
Specific bequest to S	10,000
	<hr/>
Total value received by S	\$130,000
Total value received by all beneficiaries, \$300,000	
Value received by S	$\$120,000 + 10,000 \times \$59,100 = \$25,610$

Total value \$300,000

Thus, the remaining federal tax of \$33,490 is apportioned to the trust.

Subp. 8. Federal tax. Minnesota Statutes, section 525.523 specifically requires the beneficiary entitled to an annuity to pay his share of federal taxes unless the will or other controlling instruments states otherwise.

Example: X, by will, bequeathes his entire residuary estate in trust to pay the income therefrom to S for life with remainder over to D. T, trustee, is authorized to provide additional funds from the trust principal if he deems such expenditures to be necessary in order to provide for the health, welfare, and

MINNESOTA RULES 1983

8150.1545 INHERITANCE AND GIFT TAX

6694

comfort of S. The will is silent regarding payment of death taxes. The entire federal tax will be charged against the trust principal.

Example: X, by will, bequeathes his entire residuary estate in trust to pay the income for five years to S. At the expiration of the five-year period, the principal is to be divided equally between S, D, E, and F. Value of the trust after payment of the expenses of administration is \$300,000. The will is silent regarding the payment of death taxes. The entire federal estate tax of \$59,100 will be apportioned in accordance with the following computation:

Value of principal after expenses	\$300,000.00
Less federal estate tax	59,100.00
	\$240,900.00
Less value of S's estate for years 15.8027 x 240,900	38,068.70
	\$202,831.30

The tax of \$59,100 will be paid by the trustee, although, for purposes of Minnesota inheritance tax, S will be taxed on \$88,776.54, with the three remaining beneficiaries being taxed on \$50,707.82. It should be noted that S has a vested interest in the remainder, consequently, one-fourth of the federal tax will be apportioned to him as under Minnesota Statutes, section 525.522. A holder of a temporary interest is not required to have any part of temporary tax apportioned against him with respect to such temporary interest.

Example: F, a widower, prior to his death, made a gift of \$100,000 to S, his son, and paid a federal gift tax of \$6,750. Upon his death, this gift was included in his estate as a gift in contemplation of death. His gross estate was valued at \$500,000 (including \$100,000 gift in contemplation of death). The federal estate tax, after giving effect to the credit for state death taxes paid, and credit for federal gift taxes paid, was \$95,250. The residue of his estate of \$350,000 is bequeathed in equal shares to S, A, B, and C. The federal tax of \$95,250 is apportioned as follows:

S, 1/4 of residuary estate	\$ 87,500			
Gift included in taxable estate as made in contemplation of death	100,000			
	\$187,500	x	tax	\$95,250 = \$39,687.50
	450,000			
A, 1/4 of residuary estate	\$ 87,500	x	\$95,250	= \$18,520.83
	450,000			
B, 1/4 of residuary estate	\$ 87,500	x	\$95,250	= \$18,520.83
	450,000			
C, 1/4 of residuary estate	\$ 87,500	x	\$95,250	= \$18,520.84
	450,000			

Example: The estate of X, a Minnesota decedent, has a gross value of \$1,500,000 all taxable in Minnesota. Homestead valued at \$50,000 passes to W, his widow, who is the surviving joint tenant. In addition, W receives, as beneficiary of his life insurance policy, all of X's life insurance proceeds of \$500,000 and a specific bequest of \$200,000. Balance of the estate goes to S. The adjusted federal gross is \$1,300,000, less a marital deduction of \$650,000. Taxable estate is \$650,000 before the application of the specific exemption. The will is silent regarding payment of death taxes.

MINNESOTA RULES 1983

6695

INHERITANCE AND GIFT TAX 8150.1545

Adjusted federal estate		\$1,300,000
Less nonprobate assets passing to W	\$550,000	
Specific bequest to W	200,000	
		750,000
Residue to S		\$ 550,000

Federal estate tax is \$161,200. The share of federal estate tax apportioned to W is \$750,000 less marital deduction of \$650,000 or \$100,000. The total amount distributable after giving effect to the marital deduction is \$650,000. Thus, W's taxable share of \$100,000, divided by \$650,000, multiplied by \$161,200 = \$24,800, which is apportioned to W. The federal tax apportioned to S is, therefore, \$161,200 - \$24,800, or \$136,400.

Example: X sets up a revocable trust and provides therein that no death taxes due with respect to the corpus of the trust shall be paid from such corpus. X's will is silent regarding the apportionment of death taxes. The corpus of the revocable trust, valued at \$200,000 at X's death, is divided equally between S and D while \$300,000 representing the balance of the estate, other than the trust corpus, is divided equally between A, B, and C. For the purpose of this example, the federal tax is assumed to be \$138,000. This tax will be apportioned as follows:

Value received by A	\$100,000	x	\$138,000	(federal estate
Value received by all beneficiaries whose interest is subject to apportionment	300,000		tax) =	\$46,000

The same amount of the federal tax is apportioned to B and C. S and D will not be required to pay any part of the federal estate tax pursuant to the directions against apportionment contained in the revocable trust instrument, in accordance with Minnesota Statutes, section 525.524.

Example: X, a Minnesota decedent, leaves a net estate of \$1,500,000. Part of the estate is represented by Wisconsin real property valued at \$500,000. B receives a cash legacy of \$200,000 with the balance of the residue divided equally between S and D, respectively. The residue, before payment of death taxes, and the payment of the specific legacy to B, is \$1,250,000. The federal estate tax is \$351,400. The federal estate tax allowable for Minnesota inheritance tax purposes is:

$$\$1,000,000 \times 351,400 \text{ or } \$234,266.66$$

1,500,000

The apportionment of federal taxes to B is:

$$\$ 200,000 \times 351,400 = \$56,224$$

1,250,000

The apportionment of federal taxes to S is:

$$\$ 525,000$$

1,250,000

(1/2 of [\$1,250,000 - 200,000] x 351,400 = 147,588). Same amount to D. B is allowed a deduction of the full amount of the federal estate tax apportioned to him as the property passing to him is entirely taxable by Minnesota. However, as S and D share equally in the Wisconsin property, each is allowed as a deduction in respect of the Minnesota property calculated as follows: Federal tax allowable for Minnesota: \$234,266.66 - 56,224 (deduction allowed to B) = \$178,042.66. One-half thereof allowable to S, \$89,021.33 and one-half allowable

MINNESOTA RULES 1983

8150.1545 INHERITANCE AND GIFT TAX

6696

to B, \$89,021.33. However, it should be noted that S and B each will be required to pay federal estate taxes of \$147,588.

Statutory Authority: *MS s 291.31 subd 2*

EXEMPTIONS; RETURNS; COMPUTATION

8150.1600 EXEMPTIONS.

Subpart 1. **In general.** Minnesota Statutes, section 291.05 provides for certain exemptions from inheritance taxes. Minnesota Statutes, section 291.03 sets out the manner in which the tax shall be computed so as to give effect to the exemptions allowed under Minnesota Statutes, section 291.05, clauses (3) to (7).

Subp. 2. **Gifts.** Gifts for public, religious, charitable, scientific, literary, educational, or public cemetery purposes:

A. A transfer that would otherwise be taxable under the provisions of Minnesota Statutes, chapter 291 shall be exempt if made to an organization described in Minnesota Statutes, section 291.05, clause (1), for one of the purposes enumerated therein, if the laws of the state under the laws of which such transferee was organized or exists, either:

(1) does not impose a death tax of any character on property transferred to a similar transferee which was organized or exists under the laws of Minnesota; or

(2) contains a reciprocal provision under which similar transferees organized or existing under the laws of Minnesota are exempt from death taxes in such other state.

Example: Decedent, a Minnesota resident, bequeaths \$10,000 to a church located in North Dakota. North Dakota's inheritance tax law exempts from taxation any bequest, legacy, devise, or transfer made to a church. Therefore, the \$10,000 bequest to the North Dakota church will be exempt from Minnesota inheritance taxes.

Example: Decedent Y, a Minnesota resident, bequeaths \$15,000 to a church located in Wisconsin. Wisconsin's inheritance tax law grants an exemption to a church in any other state if such state grants equal exemption to a bequest, legacy, devise, or transfer made to Wisconsin churches. Therefore, the \$15,000 bequest to the Wisconsin church will be exempt from Minnesota inheritance taxes.

B. A transfer to a clergyman that would otherwise be taxable will be exempt to the extent of \$1,000 if the proceeds are to be used for religious purposes or rites designated by the testator.

Example: T, a testator, bequeaths \$2,000 to Father Smith, who is not a blood relation, with the proviso that the latter will use the proceeds for the purpose of saying masses for T. The first \$1,000 of this bequest will be exempt. Father Smith will be taxed on the balance, after giving effect to the \$500 exemption allowed a stranger.

C. The following are exempt under Minnesota Statutes, section 291.05, clause (2):

(1) The homestead of a decedent and the proceeds thereof if such property was sold during administration, passing to the spouse or to any minor or dependent child of the decedent, whether natural or adopted, limited to \$30,000 or to the value of such property whichever is the lesser. The value of the property shall be the fair market value at date of valuation less any encumbrances against the property existing on such date.

(2) Proceeds of any insurance policy issued by the United States and generally known as war risk insurance, United States government life insurance, or national service life insurance.

(3) Proceeds of payments from the United States railroad retirement fund.

MINNESOTA RULES 1983

6697.

INHERITANCE AND GIFT TAX 8150.1600

(4) Proceeds of payments from United States social security benefits.

For the method of computing the tax with respect to exemptions allowed under Minnesota Statutes, section 291.05, clause (2). See example 1 under Inheritance Tax 75.

The statutory exemptions are set forth in Minnesota Statutes, section 291.05, clauses (3) to (7). For the method of computing the tax so as to give effect to these exemptions see examples under Inheritance Tax 76.

Subp. 3. Previously taxed property. Minnesota Statutes, section 291.06 provides for the exemption from inheritance taxes for property which can be identified as having been transferred to the decedent by a person who had died within a period five years prior to the death of the decedent. The exemption so allowed shall be subject to the following conditions and limitations:

A. The relationship of the transferee or beneficiary to the decedent must be that of spouse, child or other lineal descendent, legally adopted child or issue, lineal ancestor, or mutually acknowledged child or lineal issue, as defined under Minnesota Statutes, section 291.03, clauses (1) and (2). The relationship of the decedent to the person from whom such property had been transferred must also have been that of spouse, child or other lineal descendent, legally adopted child or issue, lineal ancestor, or mutually acknowledged child or lineal issue, as defined under Minnesota Statutes, section 291.03, clauses (1) and (2).

B. The person from whom the decedent had received the property must have died less than five years before the death of the decedent. The time at which the property was actually transferred to or received by the decedent is irrelevant.

C. An inheritance tax must have been determined and actually paid to this state on the transfer of the property from the first decedent to the second decedent. Mere filing of an inheritance tax return is not sufficient to qualify for the exemption. This exemption shall be limited to the value of property which was in excess of the amount of the exemption allowed on the transfer to the second decedent.

Example: H left his entire estate to W, his wife. The estate was valued at \$100,000, and an inheritance tax was paid to the state of Minnesota on \$70,000 (\$100,000 less the widow's exemption of \$30,000). Before the estate is distributed, W dies and leaves the \$100,000 to S, her son. S may claim an exemption of \$70,000 under Minnesota Statutes, section 291.03.

No reduction of this exemption shall be made because of other exemptions or deductions claimed by the transferee, except that the total exemptions for a single item of property shall not exceed its value.

D. The exempt property must be identified as property received by the second decedent from the first decedent. This exemption is not limited to property identified as the specific or identical property received from the first decedent but extends to substituted property acquired by the process of exchange, including the proceeds of the sale or other disposition of property so received as well as property acquired with such proceeds. The number of exchanges is immaterial. Such substituted property, however, must be property identified as acquired through exchange of the specific property received from the first decedent and must be clearly traced to the specific property originally so received.

E. When the property received from the first decedent or the proceeds therefrom were commingled with the second decedent's property or funds from other sources, a proportionate part of the lowest value of the commingled property or funds between the date of commingling and decedent's death shall be exempted under this section. If other property was acquired through withdrawals from commingled funds and claimed as exempt property, such other property shall be presumed to have been acquired with property received from

the prior decedent or the proceeds therefrom if the balance of the commingled fund remained above the purchase price of such other property at all times prior to its purchase. If such other property is not claimed as exempt property or if property is not acquired with the withdrawals, however, it shall be presumed that the property received from the first decedent or the proceeds therefrom were the last part of the commingled fund to be spent.

Example: H left \$30,000 in cash to S, his son, who paid an inheritance tax on all of it. S deposited \$20,000 in a bank account containing \$20,000 of his own money and invested \$10,000 in his own private business, in which he had already invested \$50,000. One year later he withdrew \$10,000 from the bank account to buy 100 shares of XYZ stock. S dies the next year and leaves to W, his wife, his business, the 100 shares of XYZ stock, and the bank account with \$15,000 in it. S began using the money in the bank account for his personal living expenses after he bought the XYZ stock, but the balance never fell below \$8,000. The stock never was worth less than \$10,000 and is now worth \$12,000. The capital account of the business once fell to \$30,000 but is now at \$75,000. We may exempt: (1) \$8,000 from the bank account, since it is presumed that S's personal expenses were first made from deposits other than the previously taxed property; (2) \$10,000 worth of stock, since it is presumed that the previously taxed property was used to purchase it; (3) a \$6,000 share in the business, since this is the proportionate share of its lowest value between the investment and S's death that is attributable to the previously taxed property.

F. The exempt property shall be presumed to pass with the residue of the second decedent's estate, regardless of which transferee actually receives such property, unless the contrary clearly appears (the contrary would clearly appear, for example, from a specific bequest or devise of such property). If the residue is divided among several transferees, or if the estate passes to several transferees by intestate succession, such transferees shall be presumed to receive a proportionate part of the exempt property. The exempt property shall be considered the last part of the residue or intestate estate to be expended for general claims against the estate or administrative expenses.

G. This exemption is limited to the value of the property at the date of death of the prior decedent or the value of the property (or property traceable to it) at the date of death of the present decedent, whichever is lower. Each individual item of property is considered separately at its lower value.

H. The value of previously taxed property, to the extent that it is exempt under this section, shall not be included in determining the rate applicable under Minnesota Statutes, section 291.03, to other transfers made to the transferee.

I. The burden is on the exemption claimant to bring himself within this exemption.

Statutory Authority: *MS s 291.31 subd 2*

Note: The cross-references in subpart 2, item C cannot be converted to Minnesota Rules numbers because Inheritance Tax 75 and 76 have been repealed.

8150.1800 GENERAL REQUIREMENTS OF RETURN, SCHEDULE, OR LIST.

Subpart 1. **General rule.** Every person made liable for a tax imposed by Minnesota Statutes, chapter 291, shall make such return, schedule, or list as required by these rules. The return, schedule, or list shall include therein the information required by the applicable rules or forms. Effective January 1, 1964.

Subp. 2. **Returns for probate proceedings.** Probate proceedings:

A. Every executor, administrator, or representative of the estate of a deceased person shall file with the probate court on form IG-2 a true and complete schedule of all nonprobate assets of the decedent. This form IG-2 is to be filed with the court at the same time that the verified inventory and

MINNESOTA RULES 1983

6699

INHERITANCE AND GIFT TAX 8150.1800

appraisal of the probate assets of the decedent are filed with the court. A copy of form IG-2 shall be forwarded to the commissioner of revenue, inheritance tax division, at the time that the same is filed with the court.

B. Every executor, administrator, or representative of the estate of a deceased person shall file with the department of revenue on form IG-1, an inheritance tax return. The values contained in the inventory and appraisal shall be reflected in this return as well as the value of all nonprobate assets. In addition, all deductions and exemptions provided for by Minnesota Statutes, chapter 291, shall be enumerated as they are claimed by a representative and there shall be a computation of the inheritance tax due. A copy of such return shall be filed with the probate court.

In listing and describing any nonprobate asset, adequate identifying information shall be furnished. For example, listing of money in a bank account should disclose the name and address of the depository, whether checking, savings, or time deposit savings account, return of interest, and serial number; a description of life insurance should list the name of the insurer, number of the policy, name of the beneficiary, and amount of proceeds.

C. Minnesota Statutes, section 291.09, subdivision 1, paragraph (c), provides that the values shown upon the inheritance tax return as to both probate and nonprobate assets shall be conclusive unless objection is made to said values within 90 days after the filing of the inheritance tax return with the commissioner of revenue. The statute further provides that the return shall be conclusive as to all other matters relating to the taxability of probate assets unless written objection is filed within 90 days as set forth above.

Objections as to the value of any assets shown on the inheritance tax return or relating to any other matter of taxability of probate assets must be filed in writing with the probate court. Such objection may be filed by the commissioner, the representative of the estate, or any other person from whom any portion of tax shown to be due on the return is or may be due.

Pursuant to the filing of such written objections, the probate court is by the statute directed to schedule hearing upon such objections giving 30 days mailed notice to the interested parties. After such hearing, the court shall make its order determining the matter objected to, and the inheritance tax return shall be adjusted by the commissioner in conformance with the order of the probate court.

D. If the probate court approves an account of a representative, which account allows a deduction in amount different than was used in the determination of the tax on the inheritance tax return, or if the decree of distribution assigns property to persons other than those reflected in the inheritance tax return or assigns property in different shares than the shares shown on the inheritance tax return, the commissioner shall issue his order adjusting the computation of the inheritance taxes due in accordance with the settled account or decree. In addition, if the probate court finds that the relationship between the decedent and any person who takes property under the decree of the court is different than that reflected on the inheritance tax return, the commissioner shall recompute the inheritance taxes due in accordance with said determination of the probate court.

The action of the commissioner in adjusting computation of the inheritance taxes due in accordance with the settled account or decree of distribution must be consummated no later than 90 days after the receipt of the court's order or decree.

Subp. 3. Returns for nonprobate assets. Nonprobate assets:

A. In cases where there are no probate court proceedings relative to the estate of a deceased person, but certain property, interests in property, or rights are transferred, assigned, or pass to certain individuals under such circumstances that inheritance tax is due, Minnesota Statutes, section 291.09,

subdivision 2, paragraph (a) requires that every such person subject to a tax under the provisions of Minnesota Statutes, chapter 291 file with the commissioner on form IG-2 a schedule of nonprobate assets and also an inheritance tax return form IG-1 upon which return all assets shall be listed and deductions and exemptions claimed and the tax due computed.

B. In cases where no probate proceedings have been instituted, and in consequence thereof, the inheritance tax return filed will list only nonprobate assets, objections to valuation or any matter relating to the taxability of nonprobate assets shall be determined by the commissioner of revenue. Objections to the inheritance tax return as filed in such cases must be made within 90 days after the filing of the return with the commissioner. Any person from whom any portion of taxes imposed by Minnesota Statutes, chapter 291, is or may be due, may under Minnesota Statutes, section 291.09, subdivision 2, paragraph (b), file such objection with the commissioner of revenue. The person making such objection shall mail written notice thereof to the commissioner, to the person filing the return, and to each person from whom any part of such tax is or may be due. Such written notice shall identify the property involved and shall clearly state the basis upon which the objection is made. The commissioner of revenue shall set the time and place of the hearing which shall be at least 30 days subsequent to the date of the notice. The commissioner shall within 30 days after such hearing make an order determining the proper inheritance tax due.

This review procedure outlined in the above paragraph is also to be utilized in cases where a representative has been appointed and nonprobate assets are reflected in the inheritance tax return filed for the purpose of determining all matters relating to the taxability of nonprobate assets except valuation. Whenever there are probate proceedings and a representative appointed, the valuation of all assets is to be determined by the probate court in accordance with the provisions of Minnesota Statutes, section 291.09, subdivision 1.

C. Minnesota Statutes, section 291.09, subdivision 2, paragraph (c), provides that any person liable for a tax under Minnesota Statutes, chapter 291, need not individually file a schedule of nonprobate assets and an inheritance tax return if the transfers which gave rise to his tax liability are included in a schedule in nonprobate assets and inheritance tax return previously filed by another person with the commissioner.

Subp. 4. Commissioner to make and file return. Minnesota Statutes, section 291.09, subdivision 3, provides that the commissioner shall, in situations where an inheritance tax return is required to be filed under the provisions of Minnesota Statutes, section 291.09, but such return has not been filed within 18 months after the decedent's death, make and file an inheritance tax return and compute the tax due resulting from the transfers shown upon said return. The commissioner upon the making of such return shall mail copies to the representative of the decedent's estate if any has been appointed and to each person from whom any portion of tax is due.

Any interested person may make objections to the return as filed by the commissioner in accordance with the provisions of Minnesota Statutes, section 291.09, subdivision 1, paragraph (c), and subdivision 2, paragraph (b). The time limitations as set forth in Minnesota Statutes, section 291.09, subdivisions 1 and 2, mentioned above, shall commence with the mailing of copies of the inheritance tax return by the commissioner. Objections to any item included in an inheritance tax return prepared by the commissioner are to be made in the same manner as though the return in question had been filed by a representative who has been appointed, or any person from whom a tax is due. That is, if a representative has been appointed and probate proceedings have been commenced. All questions of valuations of assets both probate, and nonprobate to which there is objection, shall be addressed to the probate court. In addition,

MINNESOTA RULES 1983

6701

INHERITANCE AND GIFT TAX 8150.1900

objections to any other matter concerning probate assets are also to be directed to the probate court. In cases where no representative has been appointed and there are no probate assets, all objections as to valuations, and all others shall be directed to the commissioner of revenue.

The fact that the probate court may have under the provisions of Minnesota Statutes, section 291.09, subdivision 1, paragraph (e), waived the filing of an inheritance tax return does not preclude the commissioner from filing a return in situations where information available to him indicates that a tax is due.

Subp. 5. Agreement to utilize federal values. Minnesota Statutes, section 291.09, subdivision 5, provides that the commissioner and the representative of the decedent's estate may agree that the valuations of assets established for purposes of the federal estate tax on the decedent's estate shall be utilized for the purposes of determining the inheritance tax.

A representative who desires to enter into such agreement with the commissioner should execute in duplicate form 1G-3 and forward the same to the commissioner for his consideration. If the commissioner determines that such agreement should be entered into, he will subscribe to form and return one copy to the representative.

Statutory Authority: *MS s 291.31 subd 2*

8150.1900 COMPUTATION OF TAX.

Subpart 1. In general. The state inheritance tax law is based upon the principle of taking a tax upon the amount of money value received by each beneficiary of the estate of a decedent. In accordance with Minnesota Statutes, section 291.03, the exemptions and the rates applied to each beneficiary are based upon the relationship of the decedent to the class of which such beneficiary is a member.

Subp. 2. Method of computing tax. The exemption is allowed against the money value of the property taxed in the lowest rate bracket. The amount in that bracket unabsorbed by the exemption is taxed at the rate applicable to that bracket. The remaining amount is then taxed at the rates applicable to the remaining brackets in ascending order. Where the beneficiary is the widow, the first bracket, which has a maximum of \$25,000, is not sufficient to absorb the statutory \$30,000 exemption. Therefore, the remaining \$5,000 of the widow's exemption is applied against the second bracket.

The use of the table set out in subpart 3, which gives effect to the exemptions and rates provided in Minnesota Statutes, section 291.03, is illustrated by the following examples:

Example: H, husband, and W, wife, are joint owners of securities valued at \$75,000, and a homestead valued at \$25,000 free and clear of any debts or mortgages. H dies. The tax is computed as follows:

Total value of joint tenancy property passing to wife as surviving owner is	\$100,000
Less homestead exemption	25,000
Taxable	\$ 75,000

Examining the tax table in subpart 3 opposite the relationship of Class I (a), it is seen that the sum of \$75,000 lies between \$50,000 in column A and \$100,000 in column B and that \$75,000 is \$25,000 in excess of the amount of column A. The amount of tax is computed from the same line under columns C and D in the following manner:

Tax from column C	\$ 400
Plus 3% from column D (of excess of \$25,000)	750
Total tax	\$1,150

MINNESOTA RULES 1983

8150.1900 INHERITANCE AND GIFT TAX

6702

Example: S, son, received \$20,000 under a decree of distribution of the probate court.

Examining the table in subpart 3 opposite the relationship of Class II it is seen that the sum of \$20,000 lies between \$6,000 in column A and \$25,000 in column B, and that \$20,000 is \$14,000 in excess of the amount in column A. The amount of tax is computed from the same line under columns C and D in the following manner:

Tax from column C	\$ 0
Plus 2% from column D (of excess of \$14,000)	280
Total tax	\$ 280

Example: D, minor daughter of decedent, is beneficiary of a trust fund valued at \$2,000,000.

Examining the table in subpart 3 opposite the relationship of Class I (b) it is seen that the value of the estate is in excess of the \$1,000,000 of column A. The amount of tax is computed as follows:

Tax from column C	\$ 72,650
Plus 10% from column D (of excess of \$1,000,000)	100,000
Total tax	\$ 172,650

Subp. 3. **Tax table.** The statutory exemption is automatically allowed in this table. The amount of the exemption (as provided in Minnesota Statutes, section 291.05, clauses (3) to (7) applicable is stated in the column Relationship of Beneficiary to Decedent.

Rates and exemptions (effective July 1, 1959).

Relationship of Beneficiary to Decedent	For amount taxable:			The tax is:
	Which equal A	But do not exceed B	The amount in this column C	Plus these percentages of the excess over the amount in Column A D
Class I (a):	Widow SPECIFIC EXEMPTION \$30,000			
	\$ 30,000	\$ 50,000	\$ 0	2%
	50,000	100,000	400	3%
	100,000	150,000	1,900	4%
	150,000	200,000	3,900	5%
	200,000	300,000	6,400	6%
	300,000	400,000	12,400	7%
	400,000	500,000	19,400	8%
	500,000	1,000,000	27,400	9%
	1,000,000		72,400	10%

Class I (b): Minor or dependent child of the decedent, or any minor or dependent legally adopted child **SPECIFIC EXEMPTION \$15,000**

\$ 15,000	\$ 25,000	\$ 0	1.5%
25,000	50,000	150	2%
50,000	100,000	650	3%
100,000	150,000	2,150	4%
150,000	200,000	4,150	5%
200,000	300,000	6,650	6%

MINNESOTA RULES 1983

6703

INHERITANCE AND GIFT TAX 8150.2000

300,000	400,000	12,650	7%
400,000	500,000	19,650	8%
500,000	1,000,000	27,650	9%
1,000,000		72,650	10%

Class II: Husband, adult child, or other lineal descendant of the decedent, adult legally adopted child or issue, lineal ancestor of the decedent or mutually acknowledged child **SPECIFIC EXEMPTION \$6,000**

\$ 6,000	\$ 25,000	\$ 0	2%
25,000	50,000	380	4%
50,000	100,000	1,380	6%
100,000	150,000	4,380	7%
150,000	200,000	7,880	7%
200,000	300,000	11,380	8%
300,000	400,000	19,380	8%
400,000	500,000	27,380	9%
500,000	1,000,000	36,380	9%
1,000,000		81,380	10%

Class III: Brother or sister or a descendant of a brother or sister of the decedent, wife or widow of a son, husband of a daughter of decedent **SPECIFIC EXEMPTION \$1,500**

\$ 1,500	\$ 25,000	\$ 0	6%
25,000	50,000	1,410	8%
50,000	100,000	3,410	10%
100,000	150,000	8,410	12%
150,000	200,000	14,410	14%
200,000	300,000	21,410	16%
300,000	400,000	37,410	18%
400,000	500,000	55,410	20%
500,000	1,000,000	75,410	22%
1,000,000		185,410	25%

Class IV: Persons in any other degree of collateral consanguinity than the above **SPECIFIC EXEMPTION \$500.**

\$ 500	\$ 25,000	\$ 0	8%
25,000	50,000	1,960	10%
50,000	100,000	4,460	12%
100,000	150,000	10,460	14%
150,000	200,000	17,460	16%
200,000	300,000	25,460	18%
300,000	400,000	43,460	20%
400,000	500,000	63,460	22%
500,000	1,000,000	85,460	26%
1,000,000		215,460	30%

Statutory Authority: *MS s 291.31 subd 2*

TIME LIMITATIONS; REPRESENTATIVES; LIENS

8150.2000 TIME LIMITATION.

Subpart 1. General rule. As a general rule, Minnesota Statutes, section 291.09, and part 8150.1800, subparts 2 and 3, limit the period during which the tax liability reflected on the self-assessed inheritance tax return may be recomputed. However, Minnesota Statutes, section 291.11, subdivision 1, paragraph (b), provides certain exceptions to this rule:

A. Where a false or fraudulent return with the intent to evade the tax is filed, any additional tax may be assessed at any time. Whether the return as filed is deemed to be false or fraudulent depends upon the facts.

B. Where a return required to be filed under Minnesota Statutes, chapter 291 has not been filed, the tax may be assessed at any time.

Example: F and S, father and son, held Blackacre as joint tenants. F died in 1963. In 1969, S requested a tax clearance as he was contemplating selling the property. Although more than four years had elapsed since F's death, the commissioner assessed an inheritance tax based upon the values existing at date of F's death.

C. The tax on items subject to tax but omitted from the return may be assessed at any time. Where the person filing the return claims that an item is not subject to tax, but discloses on the return all the relevant information relating thereto, such item will not be deemed to be an omitted item.

Example: Representative, on Exhibit 4 of the Schedule of Nonprobate Assets, reports a transfer of \$100,000 worth of securities made by the decedent in trust for the benefit of D, his daughter. Representative submits a copy of the trust instrument and claims that no inheritance tax is due as the trust was irrevocable. After the statutory period for objections had elapsed, the commissioner ascertained that the value of the trust was properly included in the taxable return as the decedent had retained the right to revoke the trust. The value of the securities at the time of decedent's death was \$500,000. Inasmuch as the return submitted by D, and the trust instrument accompanying the return contained sufficient information to enable the commissioner to redetermine the tax, the commissioner may not make such a redetermination as the statutory period for objecting had elapsed.

Subp. 2. **Agreement to follow federal determination and extend statute of limitations.** Minnesota Statutes, section 291.11, subdivision 1, paragraph (c), authorizes the commissioner and the taxpayer (whether he be representative of the estate or a beneficiary of nonprobate assets or a trustee) to enter into a written agreement extending the time for redetermining or adjusting the tax due. Minnesota Statutes, section 291.09, subdivision 5, provides that where the commissioner and the representative agree in writing, values for purposes of the inheritance tax on both probate and nonprobate assets shall be the same as those finally determined for purposes of the federal estate tax. Further, the commissioner may agree in writing with said representative that federal determination will control as to other relevant matters regarding the Minnesota inheritance tax. However, any such agreement, whether as to values or other matters, shall be limited to those matters specifically set forth in the agreement.

Form IG-3 authorized by the commissioner combines both of these agreements.

Example: Commissioner and representative execute form IG-3. The final federal determination increases the value of the principal of a revocable trust established by decedent. As the agreement contemplates that any change in the value of probate as well as nonprobate assets made for federal estate tax purposes will control the value for purposes of the Minnesota inheritance tax, the commissioner will assess additional inheritance taxes based upon such increased valuation.

Example: Commissioner and representative execute form IG-3. The final federal determination does not change any of the values, but includes in the taxable estate the value of certain assets transferred by decedent during his lifetime, as gifts made in contemplation of death. These assets had been included in both the federal and Minnesota returns but had been claimed to be exempt from taxation. The commissioner is precluded from assessing an inheritance tax on these assets as the taxability of such assets was not specifically included in the agreement, unless he proceeds pursuant to the limitation imposed under Minnesota Statutes, section 291.09.

Example: Same facts as in the example in the preceding paragraph. However, the commissioner and the representative agree that the federal

MINNESOTA RULES 1983

6705

INHERITANCE AND GIFT TAX 8150.2100

determination as to whether the gifts are in contemplation of death will control for purposes of the Minnesota inheritance tax. Consequently, the commissioner will assess additional taxes based upon this federal determination.

Form IG-3 is reproduced below.

Subp. 3. Limitation on assessment of Minnesota estate tax. The Minnesota estate tax prescribed by Minnesota Statutes, section 290.34, is determined and assessed by the commissioner of revenue. Under Minnesota Statutes, section 291.11, subdivision 1, paragraph (d), the commissioner is required to assess the tax within 90 days after the representative or the taxpayer, as the case may be, has filed form IG-13, Minnesota Estate Tax Return, together with a copy of the federal audit report or the federal closing letter accepting the federal return as filed. However, if a copy of the federal estate tax return, required to be submitted under Minnesota Statutes, section 291.09, subdivision 4, has not been furnished to the commissioner, the 90-day period will not begin to run until the time such copy is submitted. See Minnesota Statutes, section 290.34, and Inheritance Tax 186 for information regarding the Minnesota estate tax return.

Statutory Authority: *MS s 291.31 subd 2*

Note. The cross-reference in subpart 3 cannot be converted to a Minnesota Rules number because Inheritance Tax 186 is repealed.

8150.2100 DISCHARGE OF REPRESENTATIVE; RESPONSIBILITY FOR PAYMENT OF TAX.

Minnesota Statutes, section 291.12, subdivision 2, imposes personal liability for payment of inheritance taxes and interest accrued thereon on the representative or trustee who has in his possession or under his control any property to which the person required to pay the tax may be entitled to, provided the representative or trustee is aware that the tax is due thereon. The liability is limited to the extent of the value of the property in the hands of the representative or trustee. In addition, no liability for payment of the tax due or the interest accrued thereon is imposed upon the representative if the property cannot be used lawfully for payment of the amount due.

Minnesota Statutes, section 291.12, subdivision 1 requires that the representative or trustee who has possession or control of property which has been the subject of a taxable transfer shall either deduct the tax before transferring the property to the beneficiary entitled thereto, or collect the amount of the tax from such beneficiary, and thereafter shall pay any such tax over to the commissioner.

Minnesota Statutes, section 291.12, subdivision 3, authorizes such a representative or trustee to retain any property in his possession or under his control until all taxes due thereon have been deducted or collected by him, or paid directly by the transferee to the commissioner.

Under Minnesota Statutes, section 291.12, subdivision 4, the representative or trustee shall not be discharged until he has complied with the provisions of that section.

Accordingly, the probate court must find, in the language of Minnesota Statutes, section 525.504, that the representative "paid all taxes required to be paid by him and has filed proof thereof" in order to properly discharge him.

Pursuant to Minnesota Statutes, section 291.09, subdivision 1, paragraph (e), the probate court may waive the filing of any inheritance tax return where it determines that no tax is due. In such a case, the court may, in its discretion, discharge the representative without any prior notice from the commissioner to the effect that the representative has discharged his liabilities under Minnesota Statutes, section 291.12. If the probate court prefers that a letter of discharge be furnished, the court should request such discharge at the time it files the waiver with the commissioner.

Where an inheritance tax return has been filed, the commissioner will notify the court that no objection will be made to the discharge of the representative provided the representative's final account, together with the court's order approving it, and the court's decree of distribution, have all been filed with the commissioner, and the commissioner is satisfied that all inheritance taxes for which the representative is liable have been paid. The following examples are illustrative:

Example: After all expenses of administration have been paid, the residue amounts to \$60,000. Representative files an inheritance tax return and pays the commissioner \$1,160. S and D each have received \$29,240. The commissioner notifies the probate court that the representative has satisfied the provisions of Minnesota Statutes, section 291.12, by paying inheritance taxes in the amount of \$1,160, and as a consequence, no objection will be raised if the court discharges the representative.

Example: A representative reports on his inheritance tax return taxable transfers of \$25,000 to N, nephew of the decedent. These transfers consist of a \$5,000 legacy under the will and \$20,000 insurance proceeds. Representative deducts \$210 (the tax on \$5,000 less the exemption of \$1,500) and remits \$4,790 to N. N, who lives in Paris, France, refuses to pay the inheritance tax of \$1,200 due on the insurance proceeds. Representative will be held personally liable for the payment of the \$1,200 inheritance tax on the insurance proceeds as he was aware that N was required to pay a tax on such proceeds, and the representative had sufficient funds under his control to pay the tax on the insurance proceeds.

Example: Representative reports on his inheritance tax return taxable transfers of \$26,000 to N, nephew of decedent. These transfers are represented by \$1,000 legacy under the will and \$25,000 in insurance proceedings. As N's exemption is \$1,500, representative remits to him the entire legacy of \$1,000. N, who lives in Paris, France, refuses to pay the inheritance tax of \$1,490 due. Representative will be held liable for the value of the property held by him and to which N was entitled, that is, \$1,000. He will not be responsible for the payment of the additional tax of \$490.

Example: D, decedent bequeathed \$1,000 to N, his nephew, who lives in Paris, France. In due course, representative makes a payment of \$1,000 to N. Unknown to representative, D had established a bank account in his name as trustee for N. At D's death, the proceeds of this fund (Totten trust) were paid over to N. Subsequent to the time representative paid N the \$1,000 bequest, the existence of the Totten trust is made known to Representative. The amount of tax owed by N is \$1,490. However, as representative was not aware that his tax was owed by N, he will not be held liable for payment thereof.

Example: D's will leaves his probate estate to S, his son. W, widow, has previously consented in writing thereto. W, as surviving joint owner, receives securities in cash valued at \$200,000. In addition, under Minnesota Statutes, section 525.15, W receives furniture, household goods, and personal property valued at \$3,000. Representative will not be liable for the inheritance tax owed by W as the property in his possession to which W is entitled (the property subject to selection by W) may not be legally withheld by him. (See Dunnell's Digest, third edition, section 2731).

Statutory Authority: *MS s 291.31 subd 2*

8150.2200 LIENS FOR INHERITANCE TAXES.

Subpart 1. General rule. Minnesota Statutes, section 291.14, subdivision 1, imposes a lien upon all property subject to inheritance taxes. Under Minnesota Statutes, section 291.14, in order to enforce such a lien on real property subject to probate, the state must file a statement of its lien with the register of deeds (although not specifically stated in the law, by implication with the registrar of titles if the property be registered) of the county where such real property is

MINNESOTA RULES 1983

6707

INHERITANCE AND GIFT TAX 8150.2200

located within ten years after the date of any final decree of distribution which may be entered in respect of the estate involved.

Accordingly, any person acquiring such real estate or any interest therein whether as a devisee or beneficiary of the decedent or by gift or by purchase takes such real estate or interest therein subject to the lien for inheritance taxes, except as provided for in subpart 2.

Minnesota Statutes, section 291.14, subdivision 1, states:

"...the person to whom such property is transferred shall be personally liable for such tax, until its payment, to the extent of the value of such property."

However, in respect of personal property, whether tangible or intangible, the lien does not extend to persons acquiring such property from the legatee or beneficiary, unless the transfer from the legatee or beneficiary to such person was made with the intention of avoiding the tax due.

Subp. 2. Release of lien on probate assets. Minnesota Statutes, section 525.481 authorizes the probate court, in its decree of final distribution, to waive the inheritance tax lien on the property distributed, although this section does provide that the decree shall not be entered until inheritance tax shown by the return to be due has been paid, nor shall the decree be entered until objections by the commissioner to the return have been heard and determined unless the court, in its discretion, determines that the entry of the decree will not jeopardize the collection of additional inheritance tax for which the representative is liable.

When a representative, under a power contained in the will, or pursuant to an order of the probate court, conveys an interest in real estate on which a lien for unpaid inheritance taxes has been imposed, the purchaser, mortgagor, or lessee acquires his interest free from the lien, under Minnesota Statutes, section 525.693. The interest of the commissioner in respect of such inheritance taxes are protected by the provisions of Minnesota Statutes, section 291.12 and part 8150.2100.

Minnesota Statutes, section 524.482, in authorizing partial distribution of estate, conditions entitlement to such a decree upon "determination and payment of inheritance taxes sufficient to cover the property thereby distributed," and seems to require, in addition, the filing of "a bond satisfactory to the court...to secure the payment of unpaid...taxes" before permitting such a distribution.

Minnesota Statutes, section 525.481, in speaking of a final decree of distribution, states:

"The court shall have the power in its decree to waive the lien of inheritance taxes on the property distributed and *either the probate court or the commissioner of taxation shall have the power to issue certificates waiving such lien or acknowledging payment of all such taxes and discharging the lien at any time.*"

The italicized language applies only to probate assets and to lien waivers incident to final distribution.

Subp. 3. Release of lien on nonprobate assets. Minnesota Statutes, section 291.005, defines nonprobate assets as follows: "Nonprobate assets means and includes all property of every kind transferred from a decedent or at or by reason of the decedent's death which is subject to the inheritance tax imposed by this chapter...and which does not consist of probate assets."

Inheritance Tax 113, relating to the disclaimer procedures lists property that usually passes by reason of death of a decedent and states whether such property is a probate or nonprobate asset.

Although Minnesota Statutes, section 291.14, subdivision 1, provides that "every tax imposed by this chapter shall be a lien upon the property embraced in any inheritance, tax devise, bequest, legacy, or gift until paid," there is no general statutory provision authorizing the waiver of the inheritance tax lien upon nonprobate assets comparable to the provisions of Minnesota Statutes, sections

525.481 and 525.482, authorizing such waivers in the case of probate assets. Consequently, statutes applicable to the several classes of nonprobate property taxable under Minnesota Statutes, chapter 291, must be referred to for purposes of ascertaining the method of releasing the lien.

Minnesota Statutes, section 291.14, subdivision 2, addresses itself to the method of releasing the lien on real property transferred to surviving joint tenants, and on real property transferred by decedent during his lifetime on which an inheritance tax is due by reason of his death.

Minnesota Statutes, section 291.19, subdivision 1, requires any foreign executor, administrator, or trustee to pay the tax due thereon before transferring stocks or other obligations. As Minnesota Statutes, section 291.01, subdivision 1, clause (4), specifically exempts from inheritance taxes intangibles owned by a person who was a nonresident at death, Minnesota Statutes, section 291.19, subdivision 1, refers to (1) a decedent who was a beneficiary of a trust held by a foreign trustee, and (2) stocks and bonds owned by a nonresident decedent at his death where the consent of the commissioner is required in order to transfer such property pursuant to Minnesota Statutes, section 291.20, subdivision 3. However, such consent in the case of bank accounts and securities of Minnesota corporations is no longer required pursuant to Minnesota Statutes, section 291.19, subdivision 5.

Minnesota Statutes, section 291.20, subdivision 1, provides that funds in the names of decedent and others, funds in the name of decedent as trustee for others (this refers to the so-called "Totten trust"), and securities held in joint tenancy by decedent and others may not be surrendered until ten days after notice of the transfer is served upon the county treasurer. This section also provides that where the decedent had access to a safe-deposit box, the contents of the box must be inventoried in the presence of the county treasurer prior to the release of such contents to a person authorized to take possession thereof.

Minnesota Statutes, section 291.20, subdivision 3, provides that any corporation organized under the laws of Minnesota shall not transfer on its books or on its records, kept as transfer agent for any corporation, shares of stock in the name of a decedent known to be a resident of Minnesota at his death, without securing the prior consent of the commissioner.

Minnesota Statutes, section 291.01, subdivision 5, requires that an insurance company paying insurance proceeds or death benefits to a beneficiary in excess of \$1,000 or transferring any unpaid balance or any interest in an annuity contract or deposit shall notify the commissioner within ten days of such payment or transfer, on a form prescribed by him.

Subp. 4. Certain applicable rules. The following rules consistent with the various provisions of Minnesota Statutes, chapter 291, discussed above, are applicable:

A. Insurance proceeds may be paid over to the named beneficiary by the insurer without securing the prior consent of the commissioner; however, where the amount is in excess of \$1,000, notification of such payment or transfer must be made to the commissioner.

B. Annuity payments or lump sum payments in lieu thereof may be paid over to a contingent or secondary annuitant by the person or organization required to do so without securing the prior consent of the commissioner, but subject to notification of such payments to the commissioner on a form prescribed by him.

C. Funds held in the joint names of decedent and others or by the decedent as trustee may be paid over to the surviving joint owners or to the beneficiary of the funds held in trust ten days after the depository or other person in possession of such funds had duly notified the county treasurer thereof.

D. Securities, held by decedent and others as joint tenants may be surrendered to the surviving joint owner ten days after the person in possession

MINNESOTA RULES 1983

6709

INHERITANCE AND GIFT TAX 8150.2200

thereof has duly notified the commissioner that such securities will be so surrendered.

E. Except as provided in item F, the contents of a safe-deposit box to which the decedent had access shall not be surrendered by the depository to the person authorized to take possession until such contents have been inventoried in the presence of the county treasurer or a person authorized by the latter to perform this function.

F. The rule in item E, in respect of inventorying the contents of a safe-deposit box in the presence of the county treasurer may be waived by the commissioner, upon application made to him, provided the safe-deposit box is rented to an organization, association, partnership, or other entity which grants authority to certain of its officers, members, or agents to enter the safe-deposit box in furtherance of the business or activities of such organization, association, etc.

The application should contain the following information:

(1) name of the organization, association, partnership, etc., requesting the waiver;

(2) the type of activities in which applicant is engaged;

(3) the character of the property or documents usually stored in such safe-deposit box, and the names and titles of all to whom right of access to the box is given; and

(4) a statement, under oath, that no personal property of any such officers, members, or agents will be kept in such safe-deposit box.

If the application is approved, the commissioner will notify the applicant and the depository that the death of a person authorized to enter the safe-deposit box rented by the applicant will not require that the box be sealed pending an inventory thereof in the presence of a county treasurer. Such a letter will release all concerned from the liability imposed under Minnesota Statutes, section 291.20, for permitting entry into a safe-deposit box or for entering same.

G. Where shares of stock of a Minnesota corporation are held in joint tenancy between decedent and others or by decedent as trustee for others, and where no tax is due, the surviving joint tenant or the beneficiary of the trust shall file a schedule of nonprobate assets together with two copies of an affidavit of survivorship containing the description of the stock, the certificate numbers, and shares represented by each certificate so identified.

In addition, if an inheritance tax is due thereon, the surviving joint tenant or the trust beneficiary shall file an inheritance tax return and pay the tax due thereon.

If a tax clearance is desired prior to the time the inheritance tax return is filed, the person requiring the clearance should file form IG-8, Prepayment of Inheritance Tax on Specific Property, which is reproduced below.

H. Where real estate, other than certain homesteads (see item I), is held in the names of decedent and others as joint tenants, or where real estate transferred by decedent during his lifetime is subject to inheritance taxes, the state must assert its lien by filing a statement of such lien within ten years from the date upon which a copy of the death record of the deceased joint tenant or deceased transferor together with a schedule of nonprobate assets duly acknowledged by the commissioner is filed in the office of the register of deeds or registrar of titles. As this involves a delay of ten years as well as the possibility that upon receipt of the required documents, the commissioner will file the necessary papers asserting the lien, the surviving joint tenant or trust beneficiary may secure a prompt release of the state's lien by following the procedures set out in item G.

I. Where the homestead is held in the names of decedent and spouse as joint tenants, the lien on the property will be extinguished by filing an

affidavit, as prescribed by the commissioner, with the register of deeds or the registrar of titles, in duplicate, together with a certified copy of the death certificate. In order to use this method of releasing the lien on such homesteads, the following conditions must be present:

(1) the surviving joint tenant was the spouse of the decedent at date of death;

(2) the property described as the homestead was owned and occupied by the decedent as his principal dwelling place at date of death;

(3) the quantity of land included in such property was not in excess of the maximum amount allowed for purposes of the homestead exemption under Minnesota Statutes, section 510.02;

(4) the gross market value of such property at date of death was not in excess of \$30,000. (Gross market value as used herein, is defined as the market value before giving effect to any liens, encumbrances, or mortgages against the property.)

J. Where the homestead is held in the names of decedent and minor or dependent, natural or adopted child of decedent, or by a group consisting of decedent, spouse, and such children as joint tenants, and decedent's death occurred subsequent to April 20, 1939, the lien may be extinguished in accordance with the provisions of item I. Under the law, the date of a minor child's birth must be stated on the affidavit.

K. If the homestead is held in the names of decedent and issue of the decedent, or by a group consisting of decedent, spouse, and issue of decedent, and decedent's death occurred in the period beginning April 21, 1939 and ending April 25, 1949, the lien may be extinguished in accordance with the provisions of item I. The following examples are illustrative of items I, J, and K.

Example: Decedent and spouse held the homestead in joint tenancy on May 15, 1952. Gross market value of homestead was \$15,000. Spouse can file an exempt homestead affidavit in order to extinguish lien.

Example: H, decedent, W, spouse, and S, their minor son, aged 19, held the homestead in joint tenancy. Decedent died September 1, 1960. Gross market value of homestead at date of death was \$25,000. In 1969, spouse and son, who is now an adult, submit exempt homestead affidavit to register of deeds. The affidavit will extinguish the lien as son was a minor child at date of death of decedent.

Example: H, decedent, W, spouse, and S, their minor son, aged 18, held homestead in joint tenancy. Decedent died in February, 1964. Gross market value of homestead at that time was \$23,000. In 1969, W died. Value of homestead at that time was \$28,000. The exempt homestead affidavit submitted with respect to the death of H will release the lien that attached at H's death as S was a minor at the time. However, as S was an adult child at the time of W's death, and W's death occurred subsequent to April 25, 1949, the exempt homestead affidavit may not be used as it will not extinguish the lien which attached at W's death. Minnesota Statutes, section 291.05, clause (2) does not exempt from inheritance tax homesteads passing to an adult child where death of the decedent occurred subsequent to April 25, 1949.

Example: H and W held homestead in joint tenancy. At H's death, the gross market value of the property was \$45,000. The property was mortgaged to the extent of \$20,000, thus reducing the net value to \$25,000. However, the exempt homestead affidavit may not be used as the gross value of the property was in excess of \$30,000.

Statutory Authority: *MS s 291.31 subd 2*

Note: The cross-reference in subpart 3 cannot be converted to a Minnesota Rules number because Inheritance Tax 113 is repealed.

INTEREST ACCRUAL; DOMICILE DISPUTES**8150.2300 ACCRUAL OF INTEREST ON UNPAID INHERITANCE TAXES.**

Subpart 1. **General rule.** Minnesota Statutes, section 291.15, requires that accrued interest be imposed on the unpaid portion of the inheritance taxes that may be due and owing at the expiration of 18 months after the death of the decedent. There is no provision in the law which will permit the commissioner of revenue to waive the interest regardless of the reasons for the delay involved in making payment of the tax.

Subp. 2. **Payments made prior to January 1, 1964.** In the event that the inheritance tax has not been determined at the expiration of 18 months, the taxpayer may petition the probate court, if the estate is subject to probate proceedings, for permission to prepay to the county treasurer the amount of inheritance taxes that the taxpayer believes will be due and owing. If there are no probate proceedings, the taxpayer may request the commissioner to issue an order authorizing a prepayment. To the extent of the amount so prepaid no interest will thereafter accrue.

In the event that the amount so prepaid exceeds the amount of inheritance tax finally determined, the taxpayer may submit a verified petition requesting the refundment of the excess. Such refundment shall be made without interest.

As prepayment of the amount of taxes estimated to be owed constitutes a deposit against the taxes owed and not a payment of the tax, the two-year limitation of the time in which to file a petition for refund provided for in Minnesota Statutes, section 291.18 does not apply.

Subp. 3. **Payments made on or after January 1, 1964.** In all cases prepayments of the inheritance tax made on or after January 1, 1964 shall be made directly to the commissioner of revenue at his office in Saint Paul, Minnesota. Permission to make a prepayment shall be automatically granted when the remittance representing such prepayment is accompanied by a form prescribed by the commissioner of revenue.

Statutory Authority: *MS s 291.31 subd 2*

8150.2400 DISPUTED DOMICILE AGREEMENT BETWEEN STATES.

Subpart 1. **Written agreement.** In the case where Minnesota and one or more other states each claims that it was the domicile of a decedent, the commissioner may elect to invoke the provisions of Minnesota Statutes, sections 291.41 to 291.47, and enter into a written agreement with the proper taxing official of such other state or states, and with the executors, to accept a certain sum in full payment of the death taxes.

Subp. 2. **How tax computed.** The amount of tax due and payable to the state of Minnesota shall be computed in the following manner:

A. The tax shall be computed and determined in the same manner as though the decedent had been domiciled in and a resident of Minnesota at the time of his death.

B. The value of all tangible property, real, personal, or mixed, or any interest therein subject to Minnesota inheritance taxes, plus the value of that portion of the intangibles represented by dividing the full value of such intangibles by the number of states involved in the agreement shall be the numerator of a fraction. The denominator of such fraction shall be the total values employed in the first step.

C. The tax as computed in the first step shall be multiplied by the ratio of the fraction as computed in the second step. The tax as so computed shall be the tax paid to Minnesota. If the aggregate amount payable under such an agreement is less than the credit allowable to the estate against the United States estate tax imposed with respect to such estate, the executor shall pay to Minnesota the same percentage of the difference between such aggregate amount of such credit as the amount payable to Minnesota under such agreement bears to such aggregate amount.

MINNESOTA RULES 1983

8150.2400 INHERITANCE AND GIFT TAX

6712

Example: H owned rental property in Minnesota valued at \$50,000. In addition, he had cash and securities in California valued at \$80,000. His entire estate was bequeathed to W, his widow. Both Minnesota and California had reasonable grounds upon which to assert a claim that the decedent had been domiciled in and resident of their respective states. The two states and the executors of H's estate entered into an agreement to settle the matter amicably. Expenses of the probate were \$10,000.

The computation is as follows:

Step (1)	$\$50,000 + 80,000 - 10,000 =$	$\$120,000$
	Tax on \$120,000 to a widow is	1,200
	Tax on \$120,000 to a widow is	
 Step (2)	 $\$50,000 + 1/2 (80,000 - 10,000) =$	 $85,000$
	$\frac{50,000 + 80,000 - 10,000}{120,000}$	$\frac{85,000}{120,000} = 70.83\%$

Step (3) $\$1,200 \times 70.83\% = \850 tax to be paid
to Minnesota.

Example: At X's death, New York, Florida, and Minnesota each had reasonable grounds upon which to assert a claim that the decedent had been domiciled in and a resident of their respective states. The aggregate amount of inheritance taxes payable under an agreement entered into by the three states was \$360,000; the credit for state death taxes allowed by the federal government was \$424,800; the amount of inheritance taxes payable to Minnesota based upon a computation similar to the one made in the previous example was \$90,000. Subtracting from the federal credit of \$424,800 the aggregate payable to the three states, namely \$360,000 results in a total estate tax payable of \$64,800. The amount due and payable to Minnesota is represented by $\$90,000$ multiplied by $\frac{360,000.00}{360,000.00}$.

The additional amount payable to Minnesota as result of this computation is \$16,200. The total due and payable to the state of Minnesota is \$90,000 + \$16,200 or \$106,200.

Statutory Authority: *MS s 291.31 subd 2*