

CHAPTER 291

ESTATE TAX

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291.005 DEFINITIONS.

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

(1) "Federal gross estate" means the gross estate of a decedent as valued and otherwise determined for federal estate tax purposes by federal taxing authorities pursuant to the provisions of the Internal Revenue Code.

(2) "Minnesota gross estate" means the federal gross estate of a decedent after (a) excluding therefrom any property included therein which has its situs outside Minnesota and (b) including therein any property omitted from the federal gross estate which is includable therein, has its situs in Minnesota, and was not disclosed to federal taxing authorities. The Minnesota gross estate shall be valued pursuant to the provisions of section 291.215, subdivision 1.

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

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

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

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

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

(8) "Internal Revenue Code" means the United States Internal Revenue Code of 1954 as amended through December 31, 1980.

[For text of subd 2, see M.S.1980]

History: 1981 c 49 s 2

291.03 RATES.

Subdivision 1. The tax imposed shall be an amount equal to the greater of:

(1) A tax computed by applying to the Minnesota taxable estate the following prescribed rates:

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- 7 percent on the first \$100,000,
- 8 percent on the next \$100,000 or part thereof,
- 9 percent on the next \$100,000 or part thereof,
- 10 percent on the next \$200,000 or part thereof,
- 11 percent on the next \$500,000 or part thereof,
- 12 percent on the excess over \$1,000,000, or

(2) A tax equal to the amount by which the maximum credit allowable under section 2011 of the Internal Revenue Code for state death taxes exceeds the aggregate amount of all estate, inheritance, legacy and succession taxes actually paid to other states of the United States in respect of any property subject to federal estate tax; provided that where the decedent is a nonresident the tax shall be in the same proportion of the maximum credit for state death taxes described herein as the Minnesota gross estate bears to the value of the federal gross estate.

[For text of subd 2, see M.S.1980]

History: 1981 c 49 s 3

291.05 EXEMPTIONS.

The following exemptions from the tax are hereby allowed:

(1) Any devise, bequest, gift, or transfer: (a) to or for the use of the United States of America or any state or any political subdivision thereof for public purposes exclusively; (b) to or for the use of any corporation, fund, foundation, trust, or association operated within this state for religious, charitable, scientific, literary, education or public cemetery purposes exclusively, including the encouragement of art and the prevention of cruelty to children or animals, no part of which devise, bequest, gift, or transfer inures to the profit of any private stockholder or individual or to a trustee or trustees exclusively for such purposes; (c) to an employee stock ownership trust as defined in section 290.01, subdivision 25, provided that, if the beneficiaries of a stock ownership trust include the transferor, his spouse, children, grandchildren, parents, siblings or their children, the amount of the exemption shall be reduced by the product of multiplying said amount by their percentage interest in the trust; (d) to a clergyman, in an amount not exceeding \$1,000, the proceeds of which are to be used for religious purposes or rites designated by the testator; and (e) to or for the use of any corporation, fund, foundation, trust, or association operated for religious, charitable, scientific, literary, education, or public cemetery purposes exclusively, including the encouragement of art, and the prevention of cruelty to children or animals, no part of which devise, bequest, gift, or transfer inures to the profit of any private stockholder or any individual, or to a trustee or trustees exclusively for such purposes, if, at the date of the decedent's death, the laws of the state under the laws of which the transferee was organized or existing, either (i) did not impose a death tax of any character, in respect of property transferred to a similar corporation, fund, foundation, trust, or association, organized or existing under the laws of this state, or (ii) contained a reciprocal provision under which transfers to a similar corporation, fund, foundation, trust, or association, organized or existing under the laws of another state were exempted from death taxes of every character if such other state allowed a similar exemption to a similar corporation, fund, foundation, trust, or association, organized under the laws of such state.

If an interest passes or has passed from the decedent to or for the use of an organization, corporation, fund, foundation, trust or association as described above, and an interest, other than an interest which is extinguished upon the

decedent's death, in the same property, passes or has passed from the decedent for a use not described above for less than an adequate and full consideration in money or moneys worth, no exemption is allowed unless the interest was deductible pursuant to section 2055 of the Internal Revenue Code.

(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 payable upon the death of any person dying on or after June 24, 1950, and proceeds of life insurance issued pursuant to Public Law 89-214 and generally known as servicemen's group life insurance payable upon the death of any person on or after September 1, 1965, shall be exempt.

(3) Proceeds of payments made by the United States government as compensation for the decedent's service as a member of the armed forces of the United States during a period while he was classified as missing in action prior to being declared dead, shall be exempt. The commissioner shall make refunds for inheritance taxes paid which are attributable to payments exempt pursuant to this clause upon the filing of a claim by each beneficiary of the estate for his portion of the inheritance tax paid. Claims for refund must be filed with the commissioner no later than July 1, 1982.

(4) Proceeds of payments from the United States railroad retirement fund; or from the United States as social security benefit or veterans burial benefit, shall be exempt.

History: 1981 c 49 s 4

291.065 EMPLOYEE RETIREMENT PLANS, EXEMPTION.

To the extent included in the federal gross estate, the value of an annuity or other payment shall be exempt from estate tax if received under (1) any plan, which at the time of the decedent's separation from employment, whether by death or otherwise, or at the time of termination of the plan if earlier, qualified under section 401, 403, 404, 405, 408, 409 or 409A of the Internal Revenue Code; (2) a benefit plan for employees of the United States, its agencies or instrumentalities, the Federal Reserve Bank, the state of Minnesota or any of its political or governmental subdivisions or any other state or its political or governmental subdivisions; or (3) for members of a Minnesota volunteer firefighters' relief association.

History: 1981 c 49 s 5

291.07 ADDITIONAL DEDUCTIONS.

Subdivision 1. In determining the tax imposed by section 291.01, the following additional deductions shall be allowed:

(1) funeral expenses;

(2) reasonable legal, accounting, fiduciary and administration expenses and fees with respect to both probate and nonprobate assets, including but not limited to expenses incurred during administration in converting real and personal property held by the estate into cash;

(3) expenses of last illness unpaid at death;

(4) valid claims against and debts of the decedent, unpaid at death, which have been properly paid;

(5) Minnesota and federal income taxes on "income in respect of a decedent," as computed under subdivision 3;

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(6) the portion of the federal estate tax allocable to Minnesota, which shall equal the amount obtained by multiplying the federal estate tax due and payable to the United States Treasury by a fraction, the numerator of which shall equal the value of the Minnesota gross estate reduced by: (a) in the case of a resident decedent, the deductions and exemptions allowed by sections 291.05, 291.051, 291.065, 291.07, subdivision 1, clauses (1), (2), (3), (4), (5), (7) and (8); or (b) in the case of a nonresident decedent the deductions and exemptions allowed by sections 291.05, 291.051, 291.065, 291.08, clauses (1), (2), (4) and (5), and the denominator of which shall equal the value of the federal taxable estate as defined in section 2051 of the Internal Revenue Code; provided, however, in any case where any property is included in the Minnesota gross estate but incorrectly omitted from the federal gross estate or where any property that is included in both the Minnesota gross estate and the federal gross estate is valued at a higher or lower value in determining the Minnesota gross estate than in determining the federal gross estate, the federal taxable estate shall be recomputed for purposes of this provision and shall be based on a federal gross estate including the value of such omitted property and including or excluding the difference in value of such revalued property, and further provided that the federal estate tax deduction shall not exceed the federal estate tax due and payable to the United States Treasury;

(7) real estate taxes due and payable prior to or in the year of the decedent's death with respect to real estate subject to taxation under this chapter and other taxes which have accrued and are a lien on property in the estate at the time of death;

(8) liens and mortgages on property subject to taxation under this chapter which are not deductible as claims or debts of the decedent.

[For text of subd 3, see M.S.1980]

History: 1981 c 49 s 6

291.08 NONRESIDENT ESTATES; ALLOWANCE OF ADDITIONAL DEDUCTIONS.

Where a tax is due on the transfer of any property or interest therein owned by a nonresident, the following additional deductions shall be allowed:

- (1) Funeral expenses to the extent incurred in Minnesota;
- (2) Reasonable legal, accounting, fiduciary and administration fees and expenses allocable to both probate and nonprobate property included in the Minnesota gross estate;
- (3) Federal estate taxes as computed in section 291.07;
- (4) Real estate taxes on Minnesota property which are due and payable prior to or in the year of the decedent's death;
- (5) Liens and mortgages on property included in the Minnesota gross estate.

History: 1981 c 49 s 7

291.09 DETERMINATION OF TAX.

[For text of subds 1a and 2a, see M.S.1980]

Subd. 3a. (1) The commissioner may challenge matters of valuation or taxability of any assets reported on the return, or any deductions claimed, or the computation of tax, only if within 180 days from the due date of the return or the receipt of the return and all documents required to be filed with the return, whichever is later, the commissioner mails or delivers a written notice to the

personal representative objecting to the return as filed and specifying the reasons for the objection.

(2) If the personal representative disagrees with the objection or does not wish to fully comply with the objection, he may request that the commissioner hold a hearing on the objection. Within 30 days of receipt of a request, the commissioner shall set a time and place for hearing. Unless otherwise agreed upon, the hearing date shall not be earlier than 30 days nor later than 60 days from the date of the notice setting the hearing. The notice of hearing shall set forth the rights available to the personal representative under chapter 15. Not later than 30 days after the commissioner receives the report and recommendation of the hearing examiner, or a written waiver of his hearing rights by the personal representative, the commissioner shall issue an order determining the tax. Any such determination made by the commissioner may be appealed to the tax court as provided in section 271.09.

(3) At any time together with or after the objection, the commissioner, on his own initiative, may set a time and place for a hearing in accordance with (2) above.

(4) In his objection, or at any time thereafter, the commissioner may assess any additional tax as the facts may warrant, subject to the right of the personal representative to demand a hearing under chapter 15. If the personal representative does not demand a hearing within 90 days of the date of the assessment, the tax so assessed shall be legally due and the commissioner may proceed to collect any unpaid tax after one year from the date of death. If the commissioner later finds the tax assessment to be erroneous, he may adjust the assessment prior to collection.

(5) The commissioner shall not be required to object to any subsequent original, amended or supplemental return in order to preserve his rights. The commissioner shall not be precluded from objecting to a subsequent original, amended or supplemental return even though an original return was accepted as filed. If the commissioner had accepted an original return showing no tax due and a subsequent original, amended or supplemental return discloses additional assets not disclosed on the original return, the commissioner may object to any matter of valuation, taxability, deduction or computation of tax on the original return within 180 days of receipt of the subsequent original, amended or supplemental return.

(6) Subject to the provisions of section 291.11, the Minnesota estate tax liability shall be considered as finally determined on the date notification of acceptance is issued to the personal representative or, if no objection is filed, on the day following 180 days from the due date of the return or the receipt of the return, together with all other documents required to be filed with the return, whichever is later.

(7) Subject to the time limits imposed elsewhere in this chapter, the commissioner may refund an overpayment of tax, penalty or interest even though the personal representative has not made an application for refund.

[For text of subsds 4a to 7, see M.S.1980]

History: 1981 c 49 s 8

291.31 POWERS OF COMMISSIONER OF REVENUE.

Subdivision 1. The commissioner of revenue is hereby authorized and empowered to issue a citation to any person who he may believe or has reason to

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believe has any knowledge or information concerning any property which he believes or has reason to believe has been transferred by any person and as to which there is or may be a tax due to the state under the provisions of this chapter, and by such citation require such person to appear before him at a time and place to be designated in such citation and testify, under oath, as to any fact or information within his knowledge touching the quantity, value, and description of any such property and its ownership and the disposition thereof which may have been made by any person, and to produce and submit to the inspection of the commissioner of revenue any books, records, accounts, or documents in the possession of or under the control of any person so cited. The commissioner of revenue shall also have power to inspect and examine the books, records, and accounts of any person, firm, or corporation, including the stock transfer books of any corporation, for the purpose of acquiring any information deemed necessary or desirable by him for the proper enforcement of this chapter and the collection of the full amount of the tax which may be due to the state hereunder. Any and all information acquired by the commissioner of revenue under and by virtue of the means and methods provided for by this section shall be deemed and held by him as confidential and shall not be disclosed by him except so far as the same may be necessary for the enforcement and collection of the tax provided for by this chapter.

Refusal of any person to attend before the commissioner of revenue in obedience to any such citation, or to testify, or produce any books, accounts, records, or documents in his possession or under his control, and submit the same to inspection of the commissioner of revenue when so required, may, upon application of the commissioner of revenue, be punished by any district court in the same manner as if the proceedings were pending in such court.

Witnesses so cited before the commissioner of revenue, and any sheriff or other officer serving such citation, shall receive the same fees as are allowed in civil actions; to be paid by the commissioner of revenue out of the funds appropriated for the enforcement of this chapter.

[For text of subd 2, see M.S.1980]

History: 1981 c 49 s 9

291.33 [Repealed, 1Sp1981 c 1 art 3 s 4]

291.48 PUBLICITY OF RETURNS; INFORMATION.

It shall be unlawful for the commissioner or any other public official, employee or former employee to divulge or otherwise make known in any manner any particulars set forth or disclosed in any report or return required by this chapter or chapter 292 or information acquired while examining or auditing any taxpayer's liability for taxes thereunder, except in connection with a proceeding involving taxes due under this chapter or chapter 292 from the taxpayer making the return. The commissioner may furnish a copy of any return or report to any official of the United States or any state having duties to perform in respect to the assessment or collection of any inheritance, estate, or gift tax, if the taxpayer is required by the laws of the United States or of the other state to make a return therein. Prior to the release of any information to any official of the United States or any other state under the provisions of this section, the person to whom the information is to be released shall sign an agreement which provides that he will protect the confidentiality of the returns and information revealed to the extent that it is protected under the laws of the state of Minnesota. The commissioner and all other public officials and employees shall keep and maintain

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the same secrecy with respect to any information furnished by any department, commission, or official of the United States or of any other state. Nothing herein contained shall be construed to prohibit the commissioner from publishing statistics so classified as not to disclose the identity of particular property, decedents, heirs, or personal representatives, returns or reports and the contents thereof. Any person violating the provisions of this section shall be guilty of a gross misdemeanor.

The report or return of a decedent or donor shall, upon written request, be open to inspection by or disclosure to (1) the administrator, executor, or trustee of his estate, and (2) any heir at law, next of kin, or beneficiary under the will of the decedent, and any other person whose basis in property is determined in whole or part by values set forth in the return, or (3) a donee of the property, or (4) a holder of an interest in the property, but only if the commissioner finds that the heir, next of kin, beneficiary or other person or donee has a material interest which will be affected by information contained therein.

For purposes of this section the term public official shall not include judges, officials or employees of a court having jurisdiction of probate proceedings, county recorders, county treasurers, and employees in their respective offices.

History: 1981 c 49 s 10