

SENATE
STATE OF MINNESOTA
NINETIETH SESSION

S.F. No. 458

(SENATE AUTHORS: REST, Gazelka, Senjem, Anderson, P. and Franzen)

DATE	D-PG	OFFICIAL STATUS
01/30/2017	446	Introduction and first reading Referred to Taxes

1.1 A bill for an act
 1.2 relating to taxation; individual income; modifying definition of resident for purposes
 1.3 of determining domicile; amending Minnesota Statutes 2016, sections 290.01,
 1.4 subdivision 7; 291.005, subdivision 1.

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

1.6 Section 1. Minnesota Statutes 2016, section 290.01, subdivision 7, is amended to read:

1.7 Subd. 7. **Resident.** (a) The term "resident" means any individual domiciled in Minnesota,
 1.8 except that an individual is not a "resident" for the period of time that the individual is a
 1.9 "qualified individual" as defined in section 911(d)(1) of the Internal Revenue Code, if the
 1.10 qualified individual notifies the county within three months of moving out of the country
 1.11 that homestead status be revoked for the Minnesota residence of the qualified individual,
 1.12 and the property is not classified as a homestead while the individual remains a qualified
 1.13 individual.

1.14 (b) "Resident" also means any individual domiciled outside the state who maintains a
 1.15 place of abode in the state and spends in the aggregate more than one-half of the tax year
 1.16 in Minnesota, unless:

1.17 (1) the individual or the spouse of the individual is in the armed forces of the United
 1.18 States; or

1.19 (2) the individual is covered under the reciprocity provisions in section 290.081.

1.20 For purposes of this subdivision, presence within the state for any part of a calendar day
 1.21 constitutes a day spent in the state. A day does not qualify as a Minnesota day if the taxpayer
 1.22 traveled from a place outside of Minnesota primarily for and essential to obtaining medical
 1.23 care, as defined in Internal Revenue Code, section 213(d)(1)(A), in Minnesota for the

2.1 taxpayer, spouse, or a dependent of the taxpayer and the travel expense is allowed under
 2.2 section 213(d)(1)(B) of the Internal Revenue Code, and is claimed by the taxpayer as a
 2.3 deductible expense. Individuals shall keep adequate records to substantiate the days spent
 2.4 outside the state.

2.5 The term "abode" means a dwelling maintained by an individual, whether or not owned
 2.6 by the individual and whether or not occupied by the individual, and includes a dwelling
 2.7 place owned or leased by the individual's spouse.

2.8 (c) In determining where an individual is domiciled, neither the commissioner nor any
 2.9 court shall consider:

2.10 (1) charitable contributions made by an the individual within or without the state in
 2.11 determining if the individual is domiciled in Minnesota;

2.12 (2) the location of the individual's attorney, certified public accountant, or financial
 2.13 adviser; or

2.14 (3) the place of business of a financial institution at which the individual applies for any
 2.15 new type of credit or at which the individual opens or maintains any type of account.

2.16 (d) For purposes of this subdivision, the following terms have the meanings given them:

2.17 (1) "financial adviser" means:

2.18 (i) an individual or business entity engaged in business as a certified financial planner,
 2.19 registered investment adviser, licensed insurance producer or agent, or registered securities
 2.20 broker-dealer representative; or

2.21 (ii) a financial institution providing services related to trust or estate administration,
 2.22 investment management, or financial planning; and

2.23 (2) "financial institution" means a financial institution as defined in section 47.015,
 2.24 subdivision 1; a state or nationally chartered credit union; or a registered broker-dealer
 2.25 under the Securities and Exchange Act of 1934.

2.26 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
 2.27 31, 2016, except the amendment to paragraph (b) is effective for taxable years beginning
 2.28 after December 31, 2017.

2.29 Sec. 2. Minnesota Statutes 2016, section 291.005, subdivision 1, is amended to read:

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

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

3.3 (2) "Federal gross estate" means the gross estate of a decedent as required to be valued
3.4 and otherwise determined for federal estate tax purposes under the Internal Revenue Code,
3.5 increased by the value of any property in which the decedent had a qualifying income interest
3.6 for life and for which an election was made under section 291.03, subdivision 1d, for
3.7 Minnesota estate tax purposes, but was not made for federal estate tax purposes.

3.8 (3) "Internal Revenue Code" means the United States Internal Revenue Code of 1986,
3.9 as amended through December 31, ~~2014~~ 2015.

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

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

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

3.23 (7) "Resident decedent" means an individual whose domicile at the time of death was
3.24 in Minnesota. The provisions of section 290.01, subdivision 7, paragraphs (c) and (d), apply
3.25 to determinations of domicile under this chapter.

3.26 (8) "Situs of property" means, with respect to:

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

3.28 (ii) tangible personal property, the state or country in which it was normally kept or
3.29 located at the time of the decedent's death or for a gift of tangible personal property within
3.30 three years of death, the state or country in which it was normally kept or located when the
3.31 gift was executed;

3.32 (iii) a qualified work of art, as defined in section 2503(g)(2) of the Internal Revenue
3.33 Code, owned by a nonresident decedent and that is normally kept or located in this state

4.1 because it is on loan to an organization, qualifying as exempt from taxation under section
4.2 501(c)(3) of the Internal Revenue Code, that is located in Minnesota, the situs of the art is
4.3 deemed to be outside of Minnesota, notwithstanding the provisions of item (ii); and

4.4 (iv) intangible personal property, the state or country in which the decedent was domiciled
4.5 at death or for a gift of intangible personal property within three years of death, the state or
4.6 country in which the decedent was domiciled when the gift was executed.

4.7 For a nonresident decedent with an ownership interest in a pass-through entity with
4.8 assets that include real or tangible personal property, situs of the real or tangible personal
4.9 property, including qualified works of art, is determined as if the pass-through entity does
4.10 not exist and the real or tangible personal property is personally owned by the decedent. If
4.11 the pass-through entity is owned by a person or persons in addition to the decedent, ownership
4.12 of the property is attributed to the decedent in proportion to the decedent's capital ownership
4.13 share of the pass-through entity.

4.14 (9) "Pass-through entity" includes the following:

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

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

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

4.21 (iv) a trust to the extent the property is includible in the decedent's federal gross estate;
4.22 but excludes

4.23 (v) an entity whose ownership interest securities are traded on an exchange regulated
4.24 by the Securities and Exchange Commission as a national securities exchange under section
4.25 6 of the Securities Exchange Act, United States Code, title 15, section 78f.

4.26 **EFFECTIVE DATE.** This section is effective retroactively for estates of decedents
4.27 dying after December 31, 2016.