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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 806

02/21/2013 Authored by Mullery

The bill was read for the first time and referred to the Committee on Taxes

1.1 A bill for an act
1.2 relating to estate taxation; providing for situs rules for certain pass-through
1.3 interests; amending Minnesota Statutes 2012, sections 291.005, subdivision 1;
1.4 291.03, subdivision 1, by adding a subdivision.

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

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

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

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

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

1.13 (3) "Internal Revenue Code" means the United States Internal Revenue Code of
1.14 1986, as amended through April 14, 2011, but without regard to the provisions of sections
1.15 501 and 901 of Public Law 107-16, as amended by Public Law 111-312, and section
1.16 301(c) of Public Law 111-312.

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

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

1.21 (ii)(A) the value of qualified small business property under section 291.03,
1.22 subdivision 9, and the value of qualified farm property under section 291.03, subdivision
1.23 10, or (B) \$4,000,000, whichever is less.

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

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

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

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

(9) "Situs of property" means, with respect to real property, the state or country in which it is located; with respect to tangible personal property, the state or country in which it was normally kept or located at the time of the decedent's death; and with respect to intangible personal property, the state or country in which the decedent was domiciled at death. For a nonresident decedent with an ownership interest in a pass-through entity with assets that include real or tangible personal property, situs of the real or tangible personal property is determined as if the pass-through entity does not exist and the real or tangible personal property is personally owned by the decedent. If the pass-through entity is owned by a person or persons in addition to the decedent, ownership of the property is attributed to the decedent in proportion to the decedent's capital ownership share of the pass-through entity.

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

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

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

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

(iv) a trust.

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

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

Subdivision 1. **Tax amount.** (a) The tax imposed shall be an amount equal to the proportion of the maximum credit for state death taxes computed under section 2011 of the Internal Revenue Code, but using Minnesota adjusted taxable estate instead of federal adjusted taxable estate, as the Minnesota gross estate bears to the value of the federal gross estate. The tax is reduced by any credit allowed under subdivision 1c.

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

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

(i) the taxable estate, as defined under section 2051 of the Internal Revenue Code; plus
(ii) adjusted taxable gifts, as defined in section 2001(b) of the Internal Revenue Code; less

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

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

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

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

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

Sec. 3. Minnesota Statutes 2012, section 291.03, is amended by adding a subdivision to read:

Subd. 1c. **Nonresident decedent tax credit.** (a) The estate of a nonresident decedent that is subject to tax under this chapter on the value of Minnesota situs property held in a pass-through entity is allowed a credit against the tax due under this section equal to the lesser of:

(1) the amount of estate or inheritance tax paid to another state that is attributable to the Minnesota situs property held in the pass-through entity; or

4.1 (2) the amount of tax paid under this section attributable to the Minnesota situs
4.2 property held in the pass-through entity.

4.3 (b) The amount of tax attributable to the Minnesota situs property held in the
4.4 pass-through entity must be determined by the increase in the estate or inheritance tax that
4.5 results from including the market value of the property in the estate or treating the value
4.6 as a taxable inheritance to the recipient of the property.

4.7 **EFFECTIVE DATE.** This section is effective for decedents dying after December
4.8 31, 2012.