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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 805

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 taxation; imposing a gift tax and coordinating the tax with the estate  
1.3 tax; amending Minnesota Statutes 2012, sections 289A.10, subdivision 1;  
1.4 291.005, subdivision 1; 291.03, subdivision 1; proposing coding for new law in  
1.5 Minnesota Statutes, chapter 292.

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

1.7 Section 1. Minnesota Statutes 2012, section 289A.10, subdivision 1, is amended to read:

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

- 1.11 (1) a federal estate tax return is required to be filed; or
- 1.12 (2) the sum of the federal gross estate and federal adjusted taxable gifts made within  
1.13 three years of the date of the decedent's death exceeds \$1,000,000.

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

1.16 **EFFECTIVE DATE.** This section is effective for estates of decedents dying after  
1.17 December 31, 2012.

1.18 Sec. 2. Minnesota Statutes 2012, section 291.005, subdivision 1, is amended to read:

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

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

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

2.3 (3) "Internal Revenue Code" means the United States Internal Revenue Code of  
2.4 1986, as amended through ~~April 14, 2011~~ January 3, 2013, but without regard to the  
2.5 provisions of sections 501 and 901 of Public Law 107-16, as amended by Public Law  
2.6 ~~111-312~~, and section 301(e) of Public Law ~~111-312~~ section 2011, paragraph (f), of the  
2.7 Internal Revenue Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

3.6 **EFFECTIVE DATE.** This section is effective for decedents dying after December  
 3.7 31, 2012.

3.8 Sec. 3. Minnesota Statutes 2012, section 291.03, subdivision 1, is amended to read:

3.9 Subdivision 1. **Tax amount.** (a) The tax imposed shall be an amount equal to the  
 3.10 proportion of the maximum credit for state death taxes computed under section 2011 of  
 3.11 the Internal Revenue Code, but using Minnesota adjusted taxable estate instead of federal  
 3.12 adjusted taxable estate, as the Minnesota gross estate bears to the value of the federal  
 3.13 gross estate. The tax is reduced by the gift tax paid by the decedent under section 292.17  
 3.14 on gifts included in the Minnesota adjusted gross estate.

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

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

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

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

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

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

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

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

3.31 **EFFECTIVE DATE.** This section is effective for decedents dying after December  
 3.32 31, 2012.

3.33 Sec. 4. **[292.16] DEFINITIONS.**

- 4.1 (a) For purposes of this chapter, the following definitions apply.
- 4.2 (b) The definitions of terms defined in section 291.005 apply.
- 4.3 (c) "Resident" has the meaning given in section 290.01.
- 4.4 (d) "Taxable gifts" means:
- 4.5 (1) the transfers by gift which are included in taxable gifts for federal gift tax
- 4.6 purposes under the following sections of the Internal Revenue Code:
- 4.7 (i) section 2503;
- 4.8 (ii) sections 2511 to 2514; and
- 4.9 (iii) sections 2516 to 2519; less
- 4.10 (2) the deductions allowed in sections 2522 to 2524 of the Internal Revenue Code.
- 4.11 **EFFECTIVE DATE.** This section is effective for taxable gifts made after June
- 4.12 30, 2013.

4.13 **Sec. 5. [292.17] GIFT TAX.**

4.14 Subdivision 1. **Imposition.** (a) A tax is imposed on the transfer of property by gift

4.15 by any individual resident or nonresident in an amount equal to ten percent of the amount

4.16 of the taxable gift.

4.17 (b) The donor is liable for payment of the tax. If the gift tax is not paid when due,

4.18 the donee of any gift is personally liable for the tax to the extent of the value of the gift.

4.19 Subd. 2. **Lifetime credit.** A credit is allowed against the tax imposed under this

4.20 section equal to \$100,000. This credit applies to the cumulative amount of taxable gifts

4.21 made by the donor during the donor's lifetime.

4.22 Subd. 3. **Out-of-state gifts.** Taxable gifts exclude the transfer of:

4.23 (1) real property located outside of this state;

4.24 (2) tangible personal property that was normally kept at a location outside of the

4.25 state on the date the gift was executed; and

4.26 (3) intangible personal property made by an individual who is not a resident.

4.27 **EFFECTIVE DATE.** This section is effective for taxable gifts made after June

4.28 30, 2013.

4.29 **Sec. 6. [292.18] RETURNS.**

4.30 (a) Any individual who makes a taxable gift during the taxable year shall file a gift

4.31 tax return in the form and manner prescribed by the commissioner.

5.1 (b) If the donor dies before filing the return, the executor of the donor's will or  
 5.2 the administrator of the donor's estate shall file the return. If the donor becomes legally  
 5.3 incompetent before filing the return, the guardian or conservator shall file the return.

5.4 (c) The return must include:

5.5 (1) each gift made during the calendar year which is to be included in computing the  
 5.6 taxable gifts;

5.7 (2) the deductions claimed and allowable under section 292.16, paragraph (d),  
 5.8 clause (2);

5.9 (3) a description of the gift, and the donee's name, address, and Social Security  
 5.10 number;

5.11 (4) the fair market value of gifts not made in money; and

5.12 (5) any other information the commissioner requires to administer the gift tax.

5.13 **EFFECTIVE DATE.** This section is effective for taxable gifts made after June  
 5.14 30, 2013.

5.15 **Sec. 7. [292.19] FILING REQUIREMENTS.**

5.16 Gift tax returns must be filed by the April 15 following the close of the calendar  
 5.17 year, except if a gift is made during the calendar year in which the donor dies, the return  
 5.18 for the donor must be filed by the last date, including extensions, for filing the gift tax  
 5.19 return for federal gift tax purposes for the donor.

5.20 **EFFECTIVE DATE.** This section is effective for taxable gifts made after June  
 5.21 30, 2013.

5.22 **Sec. 8. [292.20] APPRAISAL OF PROPERTY; DECLARATION BY DONOR.**

5.23 The commissioner may require the donor or the donee to show the property subject to  
 5.24 the tax under section 292.17 to the commissioner upon demand and may employ a suitable  
 5.25 person to appraise the property. The donor shall submit a declaration, in a form prescribed  
 5.26 by the commissioner and including any certification required by the commissioner, that the  
 5.27 property shown by the donor on the gift tax return includes all of the property transferred by  
 5.28 gift for the calendar year and not deductible under section 292.16, paragraph (d), clause (2).

5.29 **EFFECTIVE DATE.** This section is effective for taxable gifts made after June  
 5.30 30, 2013.

5.31 **Sec. 9. [292.21] ADMINISTRATIVE PROVISIONS.**

6.1           Subdivision 1. **Payment of tax; penalty for late payment.** The tax imposed under  
6.2 section 292.17 is due and payable to the commissioner by the April 15 following the close  
6.3 of the calendar year during which the gift was made. The return required under section  
6.4 292.19 must be included with the payment. If a taxable gift is made during the calendar  
6.5 year in which the donor dies, the due date is the last date, including extensions, for filing  
6.6 the gift tax return for federal gift tax purposes for the donor. If any person fails to pay the  
6.7 tax due within the time specified under this section, a penalty applies equal to ten percent  
6.8 of the amount due and unpaid or \$100, whichever is greater. The unpaid tax and penalty  
6.9 bear interest at the rate under section 270C.40 from the due date of the return.

6.10           Subd. 2. **Extensions.** The commissioner may, for good cause, extend the time for  
6.11 filing a gift tax return, if a written request is filed with a tentative return accompanied by a  
6.12 payment of the tax, which is estimated in the tentative return, on or before the last day for  
6.13 filing the return. Any person to whom an extension is granted must pay, in addition to the  
6.14 tax, interest at the rate under section 270C.40 from the date on which the tax would have  
6.15 been due without the extension.

6.16           Subd. 3. **Changes in federal gift tax.** If the amount of a taxpayer's taxable gifts  
6.17 for federal gift tax purposes, as reported on the taxpayer's federal gift tax return for any  
6.18 calendar year, is changed or corrected by the Internal Revenue Service or other officer  
6.19 of the United States or other competent authority, the taxpayer shall report the change or  
6.20 correction in federal taxable gifts within 180 days after the final determination of the change  
6.21 or correction, and concede the accuracy of the determination or provide a letter detailing  
6.22 how the federal determination is incorrect or does not change the Minnesota gift tax. Any  
6.23 taxpayer filing an amended federal gift tax return shall also file within 180 days an amended  
6.24 return under this chapter and shall include any information the commissioner requires. The  
6.25 time for filing the report or amended return may be extended by the commissioner upon due  
6.26 cause shown. Notwithstanding any limitation of time in this chapter, if, upon examination,  
6.27 the commissioner finds that the taxpayer is liable for the payment of an additional tax, the  
6.28 commissioner shall, within a reasonable time from the receipt of the report or amended  
6.29 return, notify the taxpayer of the amount of additional tax, together with interest computed  
6.30 at the rate under section 270C.40 from the date when the original tax was due and payable.  
6.31 Within 30 days of the mailing of the notice, the taxpayer shall pay the commissioner the  
6.32 amount of the additional tax and interest. If, upon examination of the report or amended  
6.33 return and related information, the commissioner finds that the taxpayer has overpaid the  
6.34 tax due the state, the commissioner shall refund the overpayment to the taxpayer.

6.35           Subd. 4. **Application of federal rules.** In administering the tax under this chapter,  
6.36 the commissioner shall apply the provisions of sections 2701 to 2704 of the Internal

7.1 Revenue Code. The words "secretary or his delegate," as used in those sections of the  
7.2 Internal Revenue Code, mean the commissioner.

7.3 **EFFECTIVE DATE.** This section is effective for taxable gifts made after June  
7.4 30, 2013.

7.5 Sec. 10. **[292.22] CREDIT AGAINST ESTATE TAX.**

7.6 A credit is allowed against the estate tax imposed under chapter 291 in the amount  
7.7 of any tax imposed and paid under this chapter for a gift includable in the Minnesota  
7.8 adjusted taxable estate of the donor under section 291.005.

7.9 **EFFECTIVE DATE.** This section is effective for taxable gifts made after June  
7.10 30, 2013.