State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION **H. F. No. 2108**

02/25/2014 Authored by Lenczewski
The bill was read for the first time and referred to the Committee on Taxes

A bill for an act

relating to taxation; unifying the estate and gift taxes; modifying base, rate, administrative, and procedural provisions of the taxes; imposing penalties; amending Minnesota Statutes 2012, sections 270C.585; 289A.01; 289A.10, subdivisions 2, 3, by adding a subdivision; 289A.18, subdivision 3, by adding a subdivision; 289A.19, subdivision 4, by adding a subdivision; 289A.20, by adding a subdivision; 289A.30, subdivision 2, by adding a subdivision; 289A.35; 289A.38, subdivisions 6, 7; 289A.50, subdivision 1; 289A.56, subdivision 3; 289A.60, subdivisions 1, 2; 291.03, by adding a subdivision; Minnesota Statutes 2013 Supplement, sections 289A.10, subdivision 1; 291.005, subdivision 1; 291.03, subdivision 1; 292.16; 292.17, subdivision 1, by adding subdivisions; 292.20; proposing coding for new law in Minnesota Statutes, chapters 291; 292; repealing Minnesota Statutes 2012, sections 291.03, subdivision 1b; 291.41; 291.42; 291.43; 291.44; 291.45; 291.46; 291.47; Minnesota Statutes 2013 Supplement, sections 291.03, subdivision 1c; 292.17, subdivisions 2, 3; 292.18; 292.19; 292.21.

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

Section 1. Minnesota Statutes 2012, section 270C.585, is amended to read:

270C.585 TRANSFEREE LIABILITY FOR ESTATE AND GIFT TAX.

(a) The personal representative and person to whom property that is subject to taxation under chapter 291 is transferred, other than a bona fide purchaser, mortgagee, or lessee, is personally liable for that tax, until its payment, to the extent of the value of the property at the time of the transfer. Personal liability also does not extend to subsequent transferees from bona fide purchasers, mortgagees, and lessees.

(b) The person to whom property that is subject to taxation under chapter 292 is transferred, other than a bona fide purchaser, mortgagee, or lessee, is personally liable for that tax, until its payment, to the extent of the value of the property at the time of the transfer. The personal representative, if required to file a gift tax return, is personally liable for that tax until its payment to the extent of the value of the probate property at the time of the decedent's death. Personal liability also does not extend to subsequent transferees from bona fide purchasers, mortgagees, and lessees.

Sec. 2. Minnesota Statutes 2012, section 289A.01, is amended to read:

289A.01 APPLICATION OF CHAPTER.

This chapter applies to laws administered by the commissioner under chapters 290, 290A, 291, 292, and 297A, and sections 298.01 and 298.015.

Sec. 3. Minnesota Statutes 2013 Supplement, section 289A.10, subdivision 1, is amended to read:

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

(1) a federal estate tax return is required to be filed; or

(2) the sum of the federal gross estate and federal adjusted taxable gifts ~~made within three years of the date of the decedent's death~~, as defined in section 2001(b) of the Internal Revenue Code, exceeds ~~$1,000,000~~ $1,500,000.

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

Sec. 4. Minnesota Statutes 2012, section 289A.10, is amended by adding a subdivision to read:

Subd. 1b. **Gift tax return required.** Any individual who makes a taxable gift during the taxable year shall file a gift tax return on a form prescribed by the commissioner. If the donor dies before filing the return, the personal representative of the donor's estate shall file the return. If the donor becomes legally incompetent before filing the return, the guardian or conservator shall file the return.

Sec. 5. Minnesota Statutes 2012, section 289A.10, subdivision 2, is amended to read:

Subd. 2. **Documents required.** The commissioner may designate on the ~~return~~ estate and gift tax returns the documents that are required to be filed together with the return to determine the computation of tax.

Sec. 6. Minnesota Statutes 2012, section 289A.10, subdivision 3, is amended to read:

Subd. 3. **Definitions.** For purposes of this section, the definitions contained in ~~section~~ sections 291.005 and 292.16 apply.

Sec. 7. Minnesota Statutes 2012, section 289A.18, subdivision 3, is amended to read:

Subd. 3. **Estate tax returns.** An estate tax return must be filed with the commissioner within nine months after the decedent's death. ~~Except in the case of the estate of a decedent dying after December 31, 2009, and before December 17, 2010, then an estate tax return must be filed with the commissioner within nine months after the decedent's death; within the time provided by section 289A.19, subdivision 4; or before September 20, 2011; whichever is later.~~

Sec. 8. Minnesota Statutes 2012, section 289A.18, is amended by adding a subdivision to read:

Subd. 3b. **Gift tax returns.** Gift tax returns must be filed with the commissioner by the April 15 following the close of the calendar year during which the gift was made.

Sec. 9. Minnesota Statutes 2012, section 289A.19, subdivision 4, is amended to read:

Subd. 4. **Estate tax returns.** The time for filing an estate tax return ~~shall be~~ is extended for ~~either~~ six months ~~or~~. If an estate is required to file a federal estate tax return, the time for filing an estate tax return is extended by six months or the amount of time granted under section 6081 of the Internal Revenue Code to file the federal estate tax return, whichever is longer.

Sec. 10. Minnesota Statutes 2012, section 289A.19, is amended by adding a subdivision to read:

Subd. 4a. **Gift tax returns.** The time for filing a gift tax return is extended for the amount of time granted under section 6075 of the Internal Revenue Code to file the federal gift tax return.

Sec. 11. Minnesota Statutes 2012, section 289A.20, is amended by adding a subdivision to read:

Subd. 3b. **Gift tax.** Taxes imposed under chapter 292 must be paid by the April 15 following the close of the calendar year during which the gift was made.

Sec. 12. Minnesota Statutes 2012, section 289A.30, subdivision 2, is amended to read:

Subd. 2. **Estate tax.** (a) Where good cause exists, the commissioner may extend the time for payment of estate tax for a period of not more than six months.

(b) If an estate is required to file a federal estate tax return and an extension to pay the federal estate tax has been granted under section 6161 of the Internal Revenue Code, the time for payment of the estate tax without penalty is extended for that period. A taxpayer who owes at least $5,000 in taxes and who, under section 6161 or 6166 of the Internal Revenue Code has been granted an extension for payment of the tax shown on the return, may elect to pay the tax due to the commissioner in equal amounts at the same time as required for federal purposes. A taxpayer electing to pay the tax in installments shall defer a percentage of tax that does not exceed the percentage of federal tax deferred and must notify the commissioner in writing no later than nine months after the death of the person whose estate is subject to taxation. If the taxpayer fails to pay an installment on time, unless it is shown that the failure is due to reasonable cause, the election is revoked and the entire amount of unpaid tax plus accrued interest is due and payable 90 days after the date on which the installment was payable.

Sec. 13. Minnesota Statutes 2012, section 289A.30, is amended by adding a subdivision to read:

Subd. 3. **Gift tax.** (a) Where good cause exists, the commissioner may extend the time for payment of gift tax for a period of not more than six months.

(b) If an individual is required to file a federal gift tax return and an extension to pay the federal gift tax has been granted under section 6161 of the Internal Revenue Code, the time for payment of the gift tax without penalty is extended for that period.

Sec. 14. Minnesota Statutes 2012, section 289A.35, is amended to read:

289A.35 ASSESSMENTS ON RETURNS.

(a) The commissioner may audit and adjust the taxpayer's computation of federal taxable income, items of federal tax preferences, or federal credit amounts to make them conform with the provisions of chapter 290 or section 298.01. If a return has been filed, the commissioner shall enter the liability reported on the return and may make any audit or investigation that is considered necessary.

(b) The commissioner may audit and adjust the taxpayer's computation of tax under ~~chapter~~ chapters 291 and 292. In the case of a return filed pursuant to section 289A.10, the commissioner shall notify the estate no later than nine months after the filing date, as provided by section 289A.38, subdivision 2, whether the return is under examination or the return has been processed as filed.

Sec. 15. Minnesota Statutes 2012, section 289A.38, subdivision 6, is amended to read:

Subd. 6. **Omission in excess of 25 percent.** Additional taxes may be assessed within 6-1/2 years after the due date of the return or the date the return was filed, whichever is later, if:

(1) the taxpayer omits from gross income an amount properly includable in it that is in excess of 25 percent of the amount of gross income stated in the return;

(2) the taxpayer omits from a sales, use, or withholding tax return an amount of taxes in excess of 25 percent of the taxes reported in the return; ~~or~~

(3) the taxpayer omits from the gross estate assets in excess of 25 percent of the gross estate reported in the return~~.~~; or

(4) the taxpayer omits from Minnesota taxable gifts the value of gifts in excess of 25 percent of the value of Minnesota taxable gifts reported on the return.

Sec. 16. Minnesota Statutes 2012, section 289A.38, subdivision 7, is amended to read:

Subd. 7. **Federal tax changes.** If the amount of income, items of tax preference, deductions, or credits for any year of a taxpayer, or the wages paid by a taxpayer for any period, as reported to the Internal Revenue Service is changed or corrected by the commissioner of Internal Revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change in income, items of tax preference, deductions, credits, or withholding tax, or, in the case of estate or gift tax, where there are adjustments to the taxable estate or taxable gifts, the taxpayer shall report the change or correction or renegotiation results in writing to the commissioner. The report must be submitted within 180 days after the final determination and must be in the form of either an amended Minnesota estate, gift withholding tax, corporate franchise tax, or income tax return conceding the accuracy of the federal determination or a letter detailing how the federal determination is incorrect or does not change the Minnesota tax. An amended Minnesota income tax return must be accompanied by an amended property tax refund return, if necessary. A taxpayer filing an amended federal tax return must also file a copy of the amended return with the commissioner of revenue within 180 days after filing the amended return.

Sec. 17. Minnesota Statutes 2012, section 289A.50, subdivision 1, is amended to read:

Subdivision 1. **General right to refund.** (a) Subject to the requirements of this section and section 289A.40, a taxpayer who has paid a tax in excess of the taxes lawfully due and who files a written claim for refund will be refunded or credited the overpayment of the tax determined by the commissioner to be erroneously paid.

(b) The claim must specify the name of the taxpayer, the date when and the period for which the tax was paid, the kind of tax paid, the amount of the tax that the taxpayer claims was erroneously paid, the grounds on which a refund is claimed, and other information relative to the payment and in the form required by the commissioner. An income tax, estate tax, gift tax, or corporate franchise tax return, or amended return claiming an overpayment constitutes a claim for refund.

(c) When, in the course of an examination, and within the time for requesting a refund, the commissioner determines that there has been an overpayment of tax, the commissioner shall refund or credit the overpayment to the taxpayer and no demand is necessary. If the overpayment exceeds $1, the amount of the overpayment must be refunded to the taxpayer. If the amount of the overpayment is less than $1, the commissioner is not required to refund. In these situations, the commissioner does not have to make written findings or serve notice by mail to the taxpayer.

(d) If the amount allowable as a credit for withholding, estimated taxes, or dependent care exceeds the tax against which the credit is allowable, the amount of the excess is considered an overpayment. The refund allowed by section 290.06, subdivision 23, is also considered an overpayment. The requirements of section 270C.33 do not apply to the refunding of such an overpayment shown on the original return filed by a taxpayer.

(e) If the entertainment tax withheld at the source exceeds by $1 or more the taxes, penalties, and interest reported in the return of the entertainment entity or imposed by section 290.9201, the excess must be refunded to the entertainment entity. If the excess is less than $1, the commissioner need not refund that amount.

(f) If the surety deposit required for a construction contract exceeds the liability of the out-of-state contractor, the commissioner shall refund the difference to the contractor.

(g) An action of the commissioner in refunding the amount of the overpayment does not constitute a determination of the correctness of the return of the taxpayer.

(h) There is appropriated from the general fund to the commissioner of revenue the amount necessary to pay refunds allowed under this section.

Sec. 18. Minnesota Statutes 2012, section 289A.56, subdivision 3, is amended to read:

Subd. 3. **Withholding tax, entertainer withholding tax, withholding from payments to out-of-state contractors, estate tax, gift tax, and sales tax overpayments.** When a refund is due for overpayments of withholding tax, entertainer withholding tax, or withholding from payments to out-of-state contractors, interest is computed from the date of payment to the date the refund is paid or credited. For purposes of this subdivision, the date of payment is the later of the date the tax was finally due or was paid.

For the purposes of computing interest on estate tax refunds, interest is paid from the later of the date of overpayment, the date the estate tax return is due, or the date the original estate tax return is filed to the date the refund is paid.

For the purposes of computing interest on gift tax refunds, interest is paid from the later of the date of overpayment, the date the gift tax return is due, or the date the original gift tax return is filed to the date the refund is paid.

For purposes of computing interest on sales and use tax refunds, interest is paid from the date of payment to the date the refund is paid or credited, if the refund claim includes a detailed schedule reflecting the tax periods covered in the claim. If the refund claim submitted does not include a detailed schedule reflecting the tax periods covered in the claim, interest is computed from the date the claim was filed.

Sec. 19. Minnesota Statutes 2012, section 289A.60, subdivision 1, is amended to read:

Subdivision 1. **Penalty for failure to pay tax.** (a) If a corporate franchise, fiduciary income, mining company, estate, gift, partnership, S corporation, or nonresident entertainer tax is not paid within the time specified for payment, a penalty of six percent is added to the unpaid tax, except that if a corporation or mining company meets the requirements of section 289A.19, subdivision 2, the penalty is not imposed.

(b) For the taxes listed in paragraph (a), in addition to the penalty in that paragraph, whether imposed or not, if a return or amended return is filed after the due date, without regard to extensions, and any tax reported as remaining due is not remitted with the return or amended return, a penalty of five percent of the tax not paid is added to the tax. If the commissioner issues an order assessing additional tax for a tax listed in paragraph (a), and the tax is not paid within 60 days after the mailing of the order or, if appealed, within 60 days after final resolution of the appeal, a penalty of five percent of the unpaid tax is added to the tax.

(c) If an individual income tax is not paid within the time specified for payment, a penalty of four percent is added to the unpaid tax. There is a presumption of reasonable cause for the late payment if the individual: (i) pays by the due date of the return at least 90 percent of the amount of tax, after credits other than withholding and estimated payments, shown owing on the return; (ii) files the return within six months after the due date; and (iii) pays the remaining balance of the reported tax when the return is filed.

(d) If the commissioner issues an order assessing additional individual income tax, and the tax is not paid within 60 days after the mailing of the order or, if appealed, within 60 days after final resolution of the appeal, a penalty of four percent of the unpaid tax is added to the tax.

(e) If a withholding or sales or use tax is not paid within the time specified for payment, a penalty must be added to the amount required to be shown as tax. The penalty is five percent of the tax not paid on or before the date specified for payment of the tax if the failure is for not more than 30 days, with an additional penalty of five percent of the amount of tax remaining unpaid during each additional 30 days or fraction of 30 days during which the failure continues, not exceeding 15 percent in the aggregate.

Sec. 20. Minnesota Statutes 2012, section 289A.60, subdivision 2, is amended to read:

Subd. 2. **Penalty for failure to make and file return.** (a) If a taxpayer fails to make and file a tax return within the time prescribed, including an extension, or fails to file an individual income tax return within six months after the due date, a penalty ~~of~~ equal to the greater of:

(1) five percent of the amount of tax not paid by the end of that period; or

(2) the amount under paragraph (b) is added to the tax.

(b) If an individual fails to make and file a gift tax return within the time prescribed, including an extension, and the amount of the Minnesota taxable gift equals or exceeds $100,000, a penalty equal to the lesser of five percent of:

(1) the Minnesota taxable gift; or

(2) the amount of the individual's net worth that exceeds $1,500,000, or $3,000,000 in combined net worth for a married couple.

The maximum penalty under this paragraph is limited to $25,000.

(c) For purposes of this subdivision, "net worth" means the sum of the following amounts owned by the individual donor (or the sum of the amounts owned by either or both spouses in the case of a married couple) at the close of the taxable year in which the gift was made:

(1) the fair market value of marketable securities, as defined in section 731(c)(2)(A) of the Internal Revenue Code; and

(2) the lesser of the fair market value or the adjusted basis, as defined in section 1011 of the Internal Revenue Code, of property, other than marketable securities.

Sec. 21. Minnesota Statutes 2013 Supplement, section 291.005, subdivision 1, is amended to read:

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

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

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

(3) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended through January 3, 2013~~, but without regard to the provisions of section 2011, paragraph (f), of the Internal Revenue Code~~.

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

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

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

~~(iii)(A) the value of qualified small business property under section 291.03, subdivision 9, and the value of qualified farm property under section 291.03, subdivision 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~~ in the estate which has its situs outside Minnesota, and (b) including ~~therein~~ any property omitted from the federal gross estate which is includable ~~therein~~ in the estate, has its situs in Minnesota, and was not disclosed to federal taxing authorities.

~~(6)~~ (5) "Nonresident decedent" means an individual whose domicile at the time of death was not in Minnesota.

~~(7)~~ (6) "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)~~ (7) "Resident decedent" means an individual whose domicile at the time of death was in Minnesota.

~~(9)~~ (8) "Situs ~~of property~~" means, with respect to:

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

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

(iii) a qualified work of art, as defined in section 2503(g)(2) of the Internal Revenue Code, owned by a nonresident decedent and that is normally kept or located in this state because it is on loan to an organization, qualifying as exempt from taxation under section 501(c)(3) of the Internal Revenue Code, that is located in Minnesota, the situs of the art is deemed to be outside of Minnesota, notwithstanding the provisions of item (ii); and

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

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, including qualified works of art, 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)~~ (9) "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 to the extent the property is includible in the decedent's federal gross estate.

Sec. 22. **[291.016] MINNESOTA TAXABLE ESTATE.**

Subdivision 1. **General.** For purposes of the tax under this chapter, the Minnesota taxable estate equals the federal taxable estate as provided under section 2051 of the Internal Revenue Code, without regard to whether the estate is subject to the federal estate tax:

(1) increased by the additions under subdivision 2; and

(2) decreased by the subtraction under subdivision 3.

Subd. 2. **Additions.** The following amounts, to the extent deducted in computing the federal taxable estate, must be added in computing the Minnesota taxable estate:

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

(2) the amount of the deduction for foreign death taxes allowed under section 2053(d) of the Internal Revenue Code;

(3) the aggregate amount of all taxable gifts as defined in section 292.16 and made by the decedent after June 30, 2013; and

(4) the amount of any tax paid by the decedent or the estate under chapter 292 during the three-year period ending on the date of the decedent's death.

Subd. 3. **Subtraction.** The value of qualified small business property under section 291.03 and the value of qualified farm property under section 291.03, subdivision 10, or $3,500,000, whichever is less, may be subtracted in computing the Minnesota taxable estate but must not reduce the Minnesota taxable estate to less than zero.

Sec. 23. Minnesota Statutes 2013 Supplement, section 291.03, subdivision 1, is amended to read:

Subdivision 1. **Tax amount.** (a) In the case of a resident decedent, 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:~~

~~(1) the gift tax paid by the decedent under section 292.17 on gifts included in the Minnesota adjusted taxable estate and not subtracted as qualified farm or small business property; and~~

~~(2) any credit allowed under subdivision 1c.~~ under this subdivision must be computed by applying to the Minnesota taxable estate the following schedule of rates:

Amount of the Minnesota taxable estate	Rate of tax
Not over $1,500,000	None
Over $1,500,000, but not over $4,000,000	12 percent of the excess over $1,500,000
Over $4,000,000, but not over $6,000,000	$300,000, plus 14 percent of the excess over $4,000,000
Over $6,000,000, but not over $10,000,000	$580,000, plus 16 percent of the excess over $6,000,000
Over $10,000,000	$1,220,000, plus 18 percent of the excess over $10,000,000

(b) In the case of a nonresident decedent, 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:~~ be computed as provided under paragraph (a) and then multiplied by a fraction, the numerator of which is the value of the Minnesota gross estate plus the aggregate amount of all Minnesota taxable gifts as defined in section 292.16 and made by the decedent after June 30, 2013, and the denominator of which is the federal gross estate plus the value of taxable gifts as defined in section 292.16 and made by the decedent after June 30, 2013.

~~(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.~~

Sec. 24. Minnesota Statutes 2012, section 291.03, is amended by adding a subdivision to read:

Subd. 1d. **Elections.** (a) For the purposes of this section, the value of the Minnesota taxable estate is determined by taking into account the deduction available under section 2056(b) of the Internal Revenue Code. An election under section 2056(b) of the Internal Revenue Code may be made for state estate tax purposes regardless of whether the election is made for federal estate tax purposes. The value of the gross estate includes the value of any property in which the decedent had a qualifying income interest for life for which an election was made under this subdivision.

(b) Except for an election made under section 2056(b) of the Internal Revenue Code, no federal election is allowable in computing the tax under this chapter unless the estate is required to file a federal estate tax return, the election is made on the federal estate tax return, and the election is allowed under federal law.

Sec. 25. **[291.031] CREDITS.**

Subdivision 1. **Gift tax credit.** A credit is allowed against the tax imposed under this chapter for gift tax paid by the decedent under section 292.17 on gifts included in the Minnesota taxable estate and not subtracted as qualified small business or farm property.

Subd. 2. **Resident decedent tax credit.** The estate of a resident decedent 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 by the estate to another state that is attributable to property with a situs outside of Minnesota; or

(2) the amount of tax paid under this chapter attributable to that property.

Subd. 3. **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

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

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

Sec. 26. Minnesota Statutes 2013 Supplement, section 292.16, is amended to read:

292.16 DEFINITIONS.

(a) For purposes of this chapter, the following definitions apply.

(b) The definitions of terms defined in section 291.005 apply.

(c) "Minnesota taxable gifts" means taxable gifts, including any gifts that were not disclosed to federal tax authorities, after:

(1) excluding taxable gifts of any property with its situs outside Minnesota made by a nonresident;

(2) including taxable gifts of any property with its situs in Minnesota made by a nonresident; and

(3) including taxable gifts of any property made by a resident.

(d) "Nonresident" means an individual whose domicile at the time of transfer of the property by gift was not in Minnesota.

(e) "Resident" ~~has the meaning given in section 290.01, subdivision 7, paragraph (a)~~ means an individual whose domicile at the time of transfer of the property by gift was in Minnesota.

~~(d)~~ (f) "Taxable gifts" means:

(1) the transfers by gift which are included in taxable gifts for federal gift tax purposes under the following sections of the Internal Revenue Code:

(i) section 2501(a)(4);

(ii) section 2503;

~~(ii)~~ (iii) sections 2511 to 2514; ~~and~~

~~(iii)~~ (iv) sections 2516 to 2519;

(v) section 529; and

(vi) section 530; plus

(2) for a transfer that includes a "qualified interest," as defined in section 2702 of the Internal Revenue Code, consisting of a term interest of less than ten years, excluding any life interest, or for which the value of the qualified interest reduces the value of the gift to zero, in the calendar year the term interest ends other than as a result of the death of the grantor, the lesser of the following:

(i) the fair market value of the remaining property after the final transfer is made to the grantor or the spouse of the grantor less any tax paid under this chapter on the transfer; or

(ii) the value of the qualified interest as disclosed on the federal gift tax return; less

~~(2)~~ (3) the deductions allowed in sections 2522 to 2524 of the Internal Revenue Code.

Sec. 27. Minnesota Statutes 2013 Supplement, section 292.17, subdivision 1, is amended to read:

Subdivision 1. **Imposition.** ~~(a)~~ For each calendar year, a tax is imposed on the transfer of property by gift by any ~~individual~~ resident or nonresident in an amount ~~equal to ten percent of the amount of the taxable gift~~ determined under this chapter.

~~(b) The donor is liable for payment of the tax. If the gift tax is not paid when due, the donee of any gift is personally liable for the tax to the extent of the value of the gift.~~

Sec. 28. Minnesota Statutes 2013 Supplement, section 292.17, is amended by adding a subdivision to read:

Subd. 1a. **Rate of tax.** The tax imposed for each calendar year is computed by applying to the aggregate of Minnesota taxable gifts made by the donor during the donor's lifetime the following schedule of rates:

Amount of the Minnesota taxable estate	Rate of tax
Not over $1,500,000	None
Over $1,500,000, but not over $4,000,000	12 percent of the excess over $1,500,000
Over $4,000,000, but not over $6,000,000	$300,000, plus 14 percent of the excess over $4,000,000
Over $6,000,000, but not over $10,000,000	$580,000, plus 16 percent of the excess over $6,000,000
Over $10,000,000	$1,220,000, plus 18 percent of the excess over $10,000,000

Sec. 29. Minnesota Statutes 2013 Supplement, section 292.17, is amended by adding a subdivision to read:

Subd. 4. **Application of federal rules.** In administering the tax under this chapter, the commissioner shall apply the provisions of sections 2701 to 2704 of the Internal Revenue Code. The words "secretary or his delegate," as used in those sections of the Internal Revenue Code, mean the commissioner.

Sec. 30. Minnesota Statutes 2013 Supplement, section 292.17, is amended by adding a subdivision to read:

Subd. 5. **Elections.** (a) For purposes of this section, the value of the Minnesota taxable gift is determined by taking into account the deduction available under section 2523(f) of the Internal Revenue Code. An election under section 2523(f) of the Internal Revenue Code may be made for Minnesota gift tax purposes regardless of whether the election is made for federal gift tax purposes. The value of the Minnesota taxable estate includes the value of any property in which the decedent had a qualifying income interest for life for which an election was made under this subdivision.

(b) Except for an election made under section 2523(f) of the Internal Revenue Code, no federal election is allowable in computing the tax under this chapter unless the donor is required to file a federal gift tax return, the election is made on the federal gift tax return, and the election is allowed under federal law.

Sec. 31. **[292.181] CREDITS.**

Subdivision 1. **Gift tax credit.** A credit is allowed against the tax imposed on the donor under this chapter for gift tax paid on gifts included in Minnesota taxable gifts on a prior return.

Subd. 2. **Nonresident tax credit.** (a) A nonresident who 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 gift tax paid to another state that is attributable to the Minnesota situs property held in the pass-through entity; or

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

(b) The amount of tax attributable to the Minnesota situs property held in the pass-through entity must be determined by the increase in the gift tax that results from including the market value of the property in the value of Minnesota taxable gifts.

Sec. 32. Minnesota Statutes 2013 Supplement, section 292.20, is amended to read:

292.20 APPRAISAL OF PROPERTY; DECLARATION BY DONOR.

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

Sec. 33. <u>**REPEALER.**</u>

<u>Minnesota Statutes 2012, sections 291.03, subdivision 1b; 291.41; 291.42; 291.43; 291.44; 291.45; 291.46; and 291.47, are repealed.</u>

<u>Minnesota Statutes 2013 Supplement, sections 291.03, subdivision 1c; 292.17, subdivisions 2 and 3; 292.18; 292.19; and 292.21, are repealed.</u>

291.03 RATES.

Subd. 1b. **Qualified terminable interest property.** For estates of decedents dying after December 31, 2009, and before January 1, 2011, if a federal election under section 301(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law 111-312, is made, the executor may make a qualified terminable interest property election, as defined in section 2056(b)(7) of the Internal Revenue Code, for purposes of computing the tax under this chapter. The election may not reduce the taxable estate under this chapter below $3,500,000. The election must be made on the tax return under this chapter and is irrevocable. All tax under this chapter must be determined using the qualified terminable interest property election made on the Minnesota return. For purposes of applying sections 2044 and 2207A of the Internal Revenue Code when computing the tax under this chapter for the estate of the decedent's surviving spouse, regardless of the date of death of the surviving spouse, amounts for which a qualified terminable interest property election has been made under this section must be treated as though a valid federal qualified terminable interest property election under section 2056(b)(7) of the Internal Revenue Code has been made.

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

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

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

291.41 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 291.41 to 291.47 the terms defined in this section shall have the meanings ascribed to them.

Subd. 2. **Executor.** "Executor" means an executor of the will or administrator of the estate of the decedent, but does not include an ancillary administrator.

Subd. 3. **Taxing official.** "Taxing official" means the commissioner of revenue of this state and the officer or body designated as such in the statute of a reciprocal state substantially similar to sections 291.41 to 291.47.

Subd. 4. **Death tax.** "Death tax" means any tax levied by a state on account of the transfer or shifting of economic benefits in property at death, or in contemplation thereof, or intended to take effect in possession or enjoyment at or after death, whether denominated an "inheritance tax," "transfer tax," "succession tax," "estate tax," "death duty," "death dues," or otherwise.

Subd. 5. **Interested person.** "Interested person" means any person who may be entitled to receive, or who has received any property or interest which may be required to be considered in computing the death tax of any state involved.

291.42 ELECTION TO INVOKE.

In any case in which this state and one or more other states each claims that it was the domicile of a decedent at the time of death, at any time prior to the commencement of legal action for determination of domicile within this state or within 60 days thereafter, any executor, or the taxing official of any such state, may elect to invoke the provisions of sections 291.41 to 291.47. Such executor or taxing official shall send a notice of such election by certified mail, receipt requested, to the taxing official of each such state and to each executor, ancillary administrator, and interested person. Within 40 days after the receipt of such notice of election any executor may reject such election by sending a notice, by certified mail, receipt requested, to the taxing officials involved and to all other executors and to all interested parties. When an election has been rejected no further proceedings shall be had under sections 291.41 to 291.47. If such election is not rejected within the 40-day period, the dispute as to death taxes shall be determined solely in accordance with the provisions of sections 291.41 to 291.47. No other proceedings to determine or assess such death taxes shall thereafter be instituted in any court of this state or otherwise.

291.43 AGREEMENTS AS TO DEATH TAX.

In any case in which an election is made and not rejected the commissioner of revenue of this state may enter into a written agreement with the other taxing officials involved and with the executors to accept a certain sum in full payment of any death taxes, together with interest and penalties, that may be due this state, provided this agreement fixes the amount to be paid the other states involved in the dispute.

291.44 DETERMINATION OF DOMICILE.

If in any such case it appears that an agreement cannot be reached, as provided in section 291.43, or if one year shall have elapsed from the date of the election without such an agreement having been reached, the domicile of the decedent at the time of death shall be determined solely for death tax purposes as follows:

(1) Where only this state and one other state are involved, the commissioner of revenue and the taxing official of the other state shall each appoint a member of a board of arbitration, and these members shall appoint the third member of the board. If this state and more than one other state are involved, the taxing officials thereof shall agree upon the authorities charged with the duty of administering death tax laws in three states not involved in the dispute and each of these authorities shall appoint a member of the board of arbitration. The board shall select one of its members as chair.

(2) Such board shall hold hearing at such places as are deemed necessary, upon reasonable notice to the executors, ancillary administrators, all other interested persons, and to the taxing officials of the states involved, all of whom are entitled to be heard.

(3) Such board may administer oaths, take testimony, subpoena witnesses and require their attendance, require the production of books, papers, and documents, issue commissions to take testimony. Subpoenas may be issued by any member of the board. Failure to obey a subpoena may be punished by any court of record in the same manner as if the subpoena had been issued by such court.

(4) Whenever practicable such board shall apply the Rules of Evidence then prevailing in the federal courts under the federal Rules of Civil Procedure.

(5) Such board shall determine the domicile of the decedent at the time of death. This determination is final and conclusive and binds this state, and all of its judicial and administrative officials on all questions concerning the domicile of the decedent for death tax purpose.

(6) The reasonable compensation and expenses of the members of the board and its employees shall be agreed upon among such members, the taxing officials involved, and the executors. If an agreement cannot be reached, such compensation and expenses shall be determined by such taxing officials; and, if they cannot agree, by the appropriate court having probate jurisdiction of the state determined to be the domicile. Such amount shall be borne by the estate and shall be deemed an administration expense.

(7) The determination of such board and the record of its proceeding shall be filed with the authority having jurisdiction to assess the death tax in the state determined to be the domicile of the decedent and with the authorities which would have had jurisdiction to assess the death tax in each of the other states involved if the decedent had been found to be domiciled therein.

291.45 ACCEPTANCE OF AGREED SUM IN FULL PAYMENT.

Notwithstanding the commencement of a legal action for determination of domicile within this state or the commencement of an arbitration proceeding, as provided in section 291.44, the commissioner of revenue of this state may in any case enter into a written agreement with the other taxing officials involved and with the executors to accept a certain sum in full payment of any death tax, together with interest and penalties, that may be due this state, provided this agreement fixes the amount to be paid the other states involved in the dispute, at any time before such proceeding is concluded. Upon the filing of this agreement with the authority which would have jurisdiction to assess the death tax of this state, if the decedent died domiciled in this state, an assessment shall be made as provided in such agreement, and this assessment finally and conclusively fixes the amount of death tax due this state. If the aggregate amount payable under such agreement or under an agreement made in accordance with the provisions of section 291.43 to the states involved is less than the minimum credit allowable to the estate against the United States estate tax imposed with respect thereto, the executor forthwith shall also pay to the commissioner of revenue of this state the same percentage of the difference between such aggregate amount of such credit as the amount payable to such commissioner under such agreement bears to such aggregate amount.

291.46 PENALTIES, INTEREST; LIMITATION.

When in any case the board of arbitration determines that a decedent died domiciled in this state, the total amount of interest and penalties for nonpayment of the tax, between the date of the election and the final determination of the board, shall not exceed ten percent of the amount of the taxes per annum.

291.47 APPLICATION.

Sections 291.41 to 291.47 apply only to cases in which each of the states involved in the dispute has in effect therein a law substantially similar to sections 291.41 to 291.47.

292.17 GIFT TAX.

Subd. 2. **Lifetime credit.** A credit is allowed against the tax imposed under this section equal to $100,000. This credit applies to the cumulative amount of taxable gifts made by the donor during the donor's lifetime.

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

(1) real property located outside of this state;

(2) tangible personal property that was normally kept at a location outside of the state on the date the gift was executed; and

(3) intangible personal property made by an individual who is not a resident at the time the gift was executed.

292.18 RETURNS.

(a) Any individual who makes a taxable gift during the taxable year shall file a gift tax return in the form and manner prescribed by the commissioner.

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

(c) The return must include:

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

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

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

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

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

292.19 FILING REQUIREMENTS.

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

292.21 ADMINISTRATIVE PROVISIONS.

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

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

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

Subd. 4. **Application of federal rules.** In administering the tax under this chapter, the commissioner shall apply the provisions of sections 2701 to 2704 of the Internal Revenue Code. The words "secretary or his delegate," as used in those sections of the Internal Revenue Code, mean the commissioner.