State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1092

03/04/2013 Authored by Poppe, Davids, Hamilton, Marquart, Swedzinski and others
The bill was read for the first time and referred to the Committee on Taxes

A bill for an act

relating to taxation; estate; making changes to exclusions for qualified small business property and qualified farm property; amending Minnesota Statutes 2012, section 291.03, subdivisions 8, 9, 10, 11.

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

Section 1. Minnesota Statutes 2012, section 291.03, subdivision 8, is amended to read:

Subd. 8. **Definitions.** (a) For purposes of this section, the following terms have the meanings given in this subdivision.

(b) "Family member" means a family member as defined in section 2032A(e)(2) of the Internal Revenue Code, or a trust whose present beneficiaries are all family members as defined in section 2032A(e)(2) of the Internal Revenue Code.

(c) "Qualified heir" means a family member who acquired qualified property ~~from~~ upon the death of the decedent and satisfies the requirement under subdivision 9, clause ~~(6)~~ (7), or subdivision 10, clause ~~(4)~~ (5), for the property.

(d) "Qualified property" means qualified small business property under subdivision 9 and qualified farm property under subdivision 10.

EFFECTIVE DATE. This section is effective retroactively for estates of decedents dying after June 30, 2011.

Sec. 2. Minnesota Statutes 2012, section 291.03, subdivision 9, is amended to read:

Subd. 9. **Qualified small business property.** Property satisfying all of the following requirements is qualified small business property:

(1) The value of the property was included in the federal adjusted taxable estate.

(2) The property consists of the assets of a trade or business or shares of stock or other ownership interests in a corporation or other entity engaged in a trade or business. ~~The decedent or the decedent's spouse must have materially participated in the trade or business within the meaning of section 469 of the Internal Revenue Code during the taxable year that ended before the date of the decedent's death.~~ Shares of stock in a corporation or an ownership interest in another type of entity do not qualify under this subdivision if the shares or ownership interests are traded on a public stock exchange at any time during the three-year period ending on the decedent's date of death. For purposes of this subdivision, an ownership interest includes the interest the decedent is deemed to own under sections 2036, 2037, and 2038 of the Internal Revenue Code.

(3) During the taxable year that ended before the decedent's death, the trade or business must not have been a passive activity within the meaning of section 469(c) of the Internal Revenue Code, and the decedent or the decedent's spouse must have materially participated in the trade or business within the meaning of section 469(h) of the Internal Revenue Code, excluding section 469(h)(3) of the Internal Revenue Code and any other provision provided by United States Treasury Department regulation that substitutes material participation in prior taxable years for material participation in the taxable year that ended before the decedent's death.

(4) The gross annual sales of the trade or business were $10,000,000 or less for the last taxable year that ended before the date of the death of the decedent.

~~(4)~~ (5) The property does not consist of cash ~~or~~, cash equivalents, publicly traded securities, or assets not used in the operation of the trade or business. For property consisting of shares of stock or other ownership interests in an entity, the ~~amount~~ value of cash ~~or~~, cash equivalents, publicly traded securities, or assets not used in the operation of the trade or business held by the corporation or other entity must be deducted from the value of the property qualifying under this subdivision in proportion to the decedent's share of ownership of the entity on the date of death.

~~(5)~~ (6) The decedent continuously owned the property, including property the decedent is deemed to own under sections 2036, 2037, and 2038 of the Internal Revenue Code, for the three-year period ending on the date of death of the decedent. In the case of a sole proprietor, if the property replaced similar property within the three-year period, the replacement property will be treated as having been owned for the three-year period ending on the date of death of the decedent.

~~(6) A family member continuously uses the property in the operation of the trade or business for three years following the date of death of the decedent.~~

(7) For three years following the date of death of the decedent, the trade or business is not a passive activity within the meaning of section 469(c) of the Internal Revenue Code, and a family member materially participates in the operation of the trade or business within the meaning of section 469(h) of the Internal Revenue Code, excluding section 469(h)(3) of the Internal Revenue Code and any other provision provided by United States Treasury Department regulation that substitutes material participation in prior taxable years for material participation in the three years following the date of death of the decedent.

(8) The estate and the qualified heir elect to treat the property as qualified small business property and agree, in the form prescribed by the commissioner, to pay the recapture tax under subdivision 11, if applicable.

EFFECTIVE DATE. This section is effective retroactively for estates of decedents dying after June 30, 2011.

Sec. 3. Minnesota Statutes 2012, section 291.03, subdivision 10, is amended to read:

Subd. 10. **Qualified farm property.** Property satisfying all of the following requirements is qualified farm property:

(1) The value of the property was included in the federal adjusted taxable estate.

(2) The property consists of ~~a farm meeting the requirements of~~ agricultural land as defined in section 500.24, subdivision 2, paragraph (g), and is owned by a person or entity that is not excluded from owning agricultural land by section 500.24~~, and was classified for property tax purposes as the homestead of the decedent or the decedent's spouse or both under section 273.124, and as class 2a property under section 273.13, subdivision 23~~.

(3) For property taxes payable in the taxable year of the decedent's death, the decedent's interest in the property was classified as the homestead of the decedent, the decedent's spouse, or both under section 273.124 and as class 2a property under section 273.13, subdivision 23.

(4) The decedent continuously owned the property, including property the decedent is deemed to own under sections 2036, 2037, and 2038 of the Internal Revenue Code, for the three-year period ending on the date of death of the decedent either by ownership of the agricultural land or pursuant to holding an interest in an entity that is not excluded from owning agricultural land under section 500.24.

~~(4) A family member continuously uses the property in the operation of the trade or business~~ (5) The property is classified for property tax purposes as class 2a property under section 273.13, subdivision 23, for three years following the date of death of the decedent.

~~(5)~~ (6) The estate and the qualified heir elect to treat the property as qualified farm property and agree, in a form prescribed by the commissioner, to pay the recapture tax under subdivision 11, if applicable.

EFFECTIVE DATE. This section is effective retroactively for estates of decedents dying after June 30, 2011.

Sec. 4. Minnesota Statutes 2012, section 291.03, subdivision 11, is amended to read:

Subd. 11. **Recapture tax.** (a) If, within three years after the decedent's death and before the death of the qualified heir, the qualified heir disposes of any interest in the qualified property, other than by a disposition to a family member, or a family member ceases to ~~use the qualified property which was acquired or passed from the decedent~~ satisfy the requirement under subdivision 9, clause (7); or 10, clause (5), an additional estate tax is imposed on the property. In the case of a sole proprietor, if the qualified heir replaces qualified small business property excluded under subdivision 9 with similar property, then the qualified heir will not be treated as having disposed of an interest in the qualified property.

(b) The amount of the additional tax equals the amount of the exclusion claimed by the estate under subdivision 8, paragraph (d), multiplied by 16 percent.

(c) The additional tax under this subdivision is due on the day which is six months after the date of the disposition or cessation in paragraph (a).

EFFECTIVE DATE. This section is effective retroactively for estates of decedents dying after June 30, 2011.