

CHAPTER 292

GIFT TAXES

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292.01 GIFT TAX. Subdivision 1. **Imposition.** A tax is hereby imposed for each calendar year upon the transfer during such calendar year by any person, resident or non-resident, of property by gift.

Subdivision 2. **Situs of property.** The tax, in the case of a person who is a resident of this state at the date of the transfer, shall be on all such transfers, if the property transferred has its situs within this state; and, for this purpose, intangible property shall be conclusively deemed to have its situs therein. The tax, in the case of a person who is a non-resident of this state at the date of such transfer, shall be on all such transfers, if the property transferred has its situs within this state.

Subdivision 3. **Nature of transfer and property.** The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real, personal, or mixed, or tangible or intangible.

Subdivision 4. **Transfer for benefit of donor; reserved power; death of donor.** The tax shall not apply to a transfer of property in trust for the use and benefit of the donor nor to a transfer of property in trust where the power to revest in the donor title to such property is vested in the donor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such property or the income therefrom, but the relinquishment or termination of such power, other than by the donor's death, shall be considered to be a transfer by the donor by gift of the property subject to such power, and any payment of the income therefrom to a beneficiary other than the donor shall be considered to be a transfer by the donor of such income by gift.

Subdivision 5. **Retroactive effect.** The tax shall not apply to such transfers made before the effective date of this chapter.

Subdivision 6. **Computation.** The tax shall be computed in the manner and at the rates hereinafter provided.

[*Ex. 1937 c. 70 s. 1*] (2394-71)

292.02 PERSON. Wherever the word "person" is used in this chapter it shall include individuals, associations, joint stock companies, partnerships, and corporations wherever the context permits or requires it.

[*Ex. 1937 c. 70 s. 1*] (2394-71)

292.03 VALUATION OF GIFT. The full and true value of property at the date of its transfer by gift shall be its value for the purpose of computing the tax

imposed by this chapter. Where property is transferred with donative intent for less than an adequate and full consideration in money or money's worth, then the amount by which its full and true value at the date of its transfer exceeds the value of the consideration shall be deemed a gift, and such excess shall be deemed the value of such gift for the purpose of computing the tax imposed by this chapter.

[Ex. 1937 c. 70 s. 2] (2394-72)

292.04 EXEMPTIONS. The following transfers by gift shall be exempt from and excluded in computing the tax imposed by this chapter:

(1) Gifts to or for the use of the state of Minnesota, or any political subdivision thereof, for exclusively public purposes;

(2) Gifts to or for the use of any fund, foundation, trust, association, organization, or corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, the promotion of the arts, or the conduct of a public cemetery, if such gift, other than for religious or charitable purposes, is to be used for such purposes exclusively within this state, and no part thereof inures to the profit of any private shareholder or individual;

(3) Gifts to a fraternal society, order, or association operating under the lodge system, but only if such gifts are to be used exclusively for the purposes designated in clause (2) of this section;

(4) Gifts to or for the use of posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units or societies are organized within the state of Minnesota and if such gifts are to be used exclusively for the purposes designated in clause (2) of this section;

(5) All property transferred, money, service, or other thing of value, paid, furnished, or delivered by any person, corporation, organization, or association to his or its employees, or to any organization of his or its employees, directly or indirectly, or to any person, firm, or corporation for them or it, including payments to cover insurance, sickness, and death benefits, pensions, relief activities, or to any other employees' benefit fund of any kind, and medical service to such employees and their families;

(6) The first \$2,500 in value of gifts (other than of future interests in property) made to any person by the donor during any calendar year.

[Ex. 1937 c. 70 s. 3] (2394-73)

292.05 SPECIFIC EXEMPTIONS. Subdivision 1. **Particular Donees.** The following specific exemptions shall be deducted in computing the amount of the gifts made to any single donee:

(1) \$10,000, if the donee is the wife or minor child, either by blood or by adoption, of the donor;

(2) \$5,000, if the donee is the husband, an adult child, by blood or by adoption, other lineal descendant, or any mutually acknowledged child of the donor, or lineal descendants of such adopted or mutually acknowledged children;

(3) \$3,000, if the donee is a lineal ancestor of the donor;

(4) \$1,000, if the donee is a class C donee, as specified in section 292.07;

(5) \$250.00, if the donee is a class D donee, as specified in section 292.07.

Subdivision 2. **Single exemption.** The exemptions allowed by this section shall be allowed once only with respect to gifts made by a donor to the same donee.

Subdivision 3. **Definition.** The term "mutually acknowledged child," as used herein, means any child to whom the donor, for not less than ten years prior to such transfer, stood in the mutually acknowledged relation of a parent; provided, however, such relationship began at or before the child's fifteenth birthday and was continuous for ten years thereafter.

[Ex. 1937 c. 70 s. 4] (2394-74)

292.06 COMPUTATION OF TAX. The tax shall be based on the aggregate sum of the gifts in excess of the applicable specific exemption made by a given donor to the same donee, and for each calendar year shall be an amount equal to the excess of (1) a tax, computed in accordance with the rates hereinafter set forth, on the excess over the applicable specific exemption of the aggregate sum of such gifts for such calendar year and for each of the preceding calendar years, over (2) a tax, computed in accordance with the rates hereinafter set forth, on the excess over the applicable specific exemption of the aggregate sum of such gifts for each of the preceding calendar years.

[Ex. 1937 c. 70 s. 5] (2394-75)

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292.07 RATES OF TAX. Subdivision 1. **Schedule.** The tax imposed by this chapter shall be computed by applying to the gifts in excess of the applicable specific exemption made by a given donor to the same donee the schedule of rates specified in subdivisions 2 and 3 of this section.

Subdivision 2. **Classification of donees.** The rates on the excess up to \$15,000 shall be (1) three-fourths per cent if the donee is a member of class A donees; (2) one and one-eighth per cent if the donee is a member of class B donees; (3) two and one-fourth per cent if the donee is a member of class C donees; (4) three per cent if the donee is a member of class D donees; and (5) three and three-fourths per cent if the donee is a member of class E donees. The rates herein specified shall be known as the primary rates.

Subdivision 3. **Rate based on amount of gift.** The rates on such part of such gift as exceeds \$15,000 and is not in excess of \$30,000, shall be two times the primary rates; on such part thereof as exceeds \$30,000 and is not in excess of \$50,000, three times the primary rate; on such part thereof as exceeds \$50,000 and is not in excess of \$100,000, three and one-half times the primary rate; on such part thereof as exceeds \$100,000 and is not in excess of \$200,000, four times the primary rate; on such part thereof as exceeds \$200,000 and is not in excess of \$300,000, five times the primary rate; on such part thereof as exceeds \$300,000 and is not in excess of \$400,000, six times the primary rate; on such part thereof as exceeds \$400,000 and is not in excess of \$500,000, seven times the primary rate; on such part thereof as exceeds \$500,000 and is not in excess of \$600,000, eight times the primary rate; on such part thereof as exceeds \$600,000 and is not in excess of \$700,000, nine times the primary rate; on such part thereof as exceeds \$700,000 and is not in excess of \$900,000, ten times the primary rate; on such part thereof as exceeds \$900,000 and is not in excess of \$1,100,000, 11 times the primary rate; and upon such part thereof as exceeds \$1,100,000, 12 times the primary rate.

Subdivision 4. **Maximum rates.** The tax shall, however, in no case exceed 35 per cent of the full and true value of the gifts in excess of the applicable specific exemption made by the given donor to the same donee. If the tax imposed herein is assessed against and attempted to be collected from the donee, it shall in no case exceed 35 per cent of the full and true value of the gift in excess of the applicable specific exemption after deducting therefrom any gift tax imposed by the United States government if such federal tax was assessed against and collected from the donee.

Subdivision 5. **Classification based on relationship.** Class A donees shall include only the wife and lineal issue of the donor, an adopted child of the donor, and the lineal issue of any such adopted child. Class B donees shall include only the husband of the donor, lineal ancestors of the donor, any child of the donor to whom he or she has stood in the mutually acknowledged relation of parent for not less than ten years prior to the making of the gift, if such relationship began at or before such child's fifteenth birthday and was continuous for ten years thereafter, and the lineal issue of such child. Class C donees shall include only a brother or sister of the donor, a descendant of such brother or sister, a wife or widow of a son of the donor, and the husband of a daughter of the donor. Class D donees shall include only the brother or sister of the father or mother of the donor, and a descendant of a brother or sister of the father or mother of the donor. Class E donees shall include all donees other than those includible in the foregoing classes.

[*Ex. 1937 c. 70 s. 6*] (2394-76)

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292.08 RETURNS. Subdivision 1. **Requisites of return by donor.** Every person making any gifts, other than those exempted by section 292.04, during any calendar year shall make a return thereof, in duplicate, to the commissioner of taxation. Every return shall specifically set forth the property transferred by gift, the date of the gift, the value at the date of the gift of every item, of property transferred by gift, the name and residence of each donee and the relationship of the donee to the donor, and, in the case of property transferred for less than an adequate consideration in money or money's worth, the character and value of the consideration received by the donor. The commissioner of taxation may also require such other information to be given on such return as may be necessary for the effective enforcement of this chapter. The return shall be in such form as he may prescribe as necessary to compute the tax imposed by this chapter, and shall be under oath of the person making the return. The return, in the case of

a donor dying prior to the date when he is required to make a return, shall be made on his behalf by his executor or administrator; that of a person for whom or whose property a guardian has been appointed shall be made by the guardian of his person or his property, or both; and that of a person employing any device to make gifts indirectly shall be made by him and by those in charge or in control of the agency or instrumentality through which such person is making gifts indirectly.

Subdivision 2. Filing; time for. The returns required to be made under subdivision 1 of this section shall be filed with the commissioner of taxation on or before the first day of March of the calendar year immediately succeeding that for which the return is made.

Subdivision 3. Extension of time. The commissioner of taxation may, whenever in his opinion good cause exists therefor, extend the time for filing any return required hereunder for not to exceed three months.

Subdivision 4. Returns by donees. The commissioner of taxation may, whenever necessary in his opinion to the effective enforcement of this chapter, require donees to file a return of gifts received by them, and such return may require such donees to report such information as is necessary to the effective enforcement of this chapter. Returns required hereunder shall be filed with the commissioner of taxation within 30 days after he has mailed notice and demand therefor to the last known address of the donee required to make such return.

[*Ex. 1937 c. 70 s. 71 (2394-77)*]

292.09 ASSESSMENT. *Am 1943-592 -1*
Subdivision 1. To whom assessed; notice. The commissioner of taxation shall determine and assess all taxes imposed by this chapter. The tax shall be assessed upon the donor, and shall be paid by him to the state treasurer within 60 days after notice of such assessment shall have been served upon him. The tax, in the case of a donor who has died prior to its assessment, shall be assessed upon his executor or administrator, and be paid by such executor or administrator within 60 days after notice of such assessment shall have been served upon him. The tax, in the case of indirect gifts, may, in the discretion of the commissioner of taxation, be assessed upon the donor, or the person or persons in charge or in control of the agency or instrumentality through which such donor is making indirect gifts, or upon both, and shall be paid by the person upon whom it is assessed within 60 days after notice of such assessment shall have been served upon him, but one tax only shall be collected in such case. Notice of assessment shall be deemed to have been made within the meaning of this subdivision when a letter containing such notice has been mailed to the last known address of the person upon whom the assessment is made.

Subdivision 2. Liability under assessment; collection; suit against resident or non-resident. The tax shall become a personal liability of the person upon whom it is assessed, if such person is a resident of this state, from the date of its assessment, shall remain such until such tax is paid, and may be collected by an action at law, in the name of this state, which may be brought in the district court of the judicial district in which such person resides or has his principal place of business, or in the district court for Ramsey county. The foregoing provisions shall also apply where such person is a non-resident of this state, so far as that is permissible under the provisions of the constitutions of the United States and this state.

Subdivision 3. Personal liability; filing lien; certificate of release. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. At any time after any transfer taxable hereunder is made which includes any real property, the commissioner of taxation may file with the register of deeds of the county in which such real property is located a claim of lien for the estimated amount of the tax due hereunder describing the real property against which such lien is claimed, and may supplement or amend such claim after the amount of tax has been determined. From the time of the filing of the lien until it is satisfied by the commissioner of taxation, the tax imposed hereunder shall be a lien upon such real property. If the commissioner of taxation is satisfied that the tax liability has been duly discharged or provided for, he may, under regulations prescribed by him, issue a certificate releasing any or all of such real property from the lien herein imposed.

Subdivision 4. Collection from donee. If the donor shall fail to pay the tax within the time provided in subdivision 1 of this section, the commissioner of taxation may serve a notice upon the donee stating the amount of the tax and the date when it became due. If the tax is not paid within 30 days after the mailing

of the notice to the donee at the address given in the return or the last known address of the donee, the tax may be collected from such donee in the same manner as provided with respect to donors in subdivision 2 of this section, and the donee shall thereafter be liable to the penalties provided in section 292.11.

[*Ex. 1937 c. 70 s. 8*] (2394-78)

292.10 ASSESSMENT ON FAILURE TO MAKE RETURN OR ON FILING OF INCORRECT OR FALSE RETURN. Subdivision 1. **Failure to make return.** If any person shall fail to make any return required under this chapter, at the time required thereby, the commissioner of taxation may, 20 days after having sent a notice, by registered mail, to the last known address, to such person and an opportunity for a hearing, make for him a return from his own knowledge and from such information as he can obtain through testimony or otherwise, and assess a tax on the basis thereof, which shall be paid within 30 days after the commissioner of taxation shall have mailed to such person a written notice of the assessment and demand for the payment of the tax thus assessed. Such assessment shall be prima facie valid and the burden of proving the invalidity thereof or any error in the calculation of such tax or any penalty included therein shall be upon the person against whom it is assessed.

Subdivision 2. **Incorrect, false, or fraudulent return.** The commissioner of taxation shall have the same powers as are conferred upon him by subdivision 1 for the assessment of additional taxes in case the returns filed by any person required to file a return are incorrect, or false or fraudulent with intent to evade the tax or postpone its payment; and, if the return was false or fraudulent with intent to evade the tax or postpone its payment, the assessment made by the commissioner of taxation shall be immune to attack to the same extent as an assessment made under subdivision 1 of this section.

[*Ex. 1937 c. 70 s. 9*] (2394-79)

292.11 PENALTIES; INTEREST; CRIMINAL LIABILITY. Subdivision 1. **Evasion.** If any person shall, without intent to evade the tax or to postpone its payment, fail to make any return required to be made by him under this chapter at the time required therein, there shall be imposed on him a specific penalty of five per cent of the tax as finally assessed. If any person shall, with intent to evade the tax or to postpone its payment, either fail to make a return when required or make a false or fraudulent return, there shall be imposed upon him a specific penalty of 20 per cent of the taxes finally assessed, and such person shall also be guilty of a gross misdemeanor.

Subdivision 2. **Failure to pay.** If any person shall fail to pay any tax due under this chapter at the time required thereby for such payment, there shall be imposed upon him a specific penalty of five per cent of the tax as finally assessed.

Subdivision 3. **Extension of time of payment.** The commissioner of taxation may, upon the filing of an affidavit by or on behalf of any person referred to in subdivision 2 of this section, if in his opinion good cause exists therefor, extend the time for payment of the tax and penalty for not to exceed three months.

Subdivision 4. **Interest.** If any tax imposed by this chapter, or any portion of such tax, is not paid when first due and payable thereunder, there shall be added thereto interest at the rate of six per cent per annum from the time above specified.

Subdivision 5. **Collection.** The penalties and interest imposed by this section may be collected as part of the tax or by separate actions brought by the commissioner of taxation, in the name of the state, for their recovery in any court in which actions for the collection of taxes imposed by this chapter may be brought under its provisions.

Subdivision 6. **Application of payments.** All payments received shall be credited first to penalties, next to interest, and then to the tax due.

[*Ex. 1937 c. 70 s. 10*] (2394-80)

292.12 REFUNDMENT. The commissioner of taxation may issue certificates for the refundment of any taxes paid by, or collected from, any person who has paid a tax in excess of the amount of tax legally due from him under the provisions of this chapter if claim therefor is filed with the commissioner of taxation within two years after such tax was paid or collected. The refundment certificates shall be for the amount of the tax illegally paid or collected, plus interest thereon at the rate of six per cent per annum from the date of the payment or collection of the tax until the date the refund is paid, and the state auditor shall cause such refund to be paid out of any funds in the state treasury not otherwise appropriated. No

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refund shall be denied merely because the tax was voluntarily paid or no protest made to its payment.

[*Ex. 1937 c. 70 s. 11*] (2394-81)

292.13 APPEAL; PROCEDURE. Any person aggrieved by the determination and assessment of a tax by the commissioner of taxation, or his denial of a claim for refund, may appeal therefrom to the district court of the county in which such person resides, or, if he is a non-resident of the state, to the district court of Ramsey county, by filing, within 30 days after such determination, with the commissioner of taxation a notice, in writing, setting forth his objections to the determination and that he appeals therefrom; and thereupon, within 30 days thereafter, the commissioner of taxation shall transmit the original papers and records which have been filed with him in relation to such matter to the clerk of the district court to which the appeal shall have been taken, and thereupon the court shall acquire jurisdiction of the proceeding. Upon 15 days' notice given to the commissioner of taxation by the appellant, the matter may be brought on for hearing and determination by the court, either in term, time or vacation, at the general or special term of the court, or at the chambers, as may be directed by order of the court. The court may determine any and all questions of law and fact necessary to the enforcement of the provisions of this chapter according to its intent and purpose, and by order direct the correction, amendment or modification of any determination made by the commissioner of taxation.

On such hearing either party may introduce the testimony of witnesses and other evidence in the same manner and subject to the same rules which govern in civil actions. When necessary, the court may adjourn or continue its hearings from time to time, to enable the parties to secure the attendance of witnesses or the taking of depositions. Depositions may be taken and used in such proceedings in the same manner as is now provided by law for the taking of depositions in civil actions.

The commissioner of taxation and any person aggrieved by the order of the district court may appeal to the supreme court from any such order made by the courts, within the time and in the manner now provided by law for the taking of appeals from orders in civil actions.

After the filing of the notice of appeal, and during the pendency of the appeal and for 30 days after final disposition thereof, no penalty shall be imposed under section 292.11.

[*Ex. 1937 c. 70 s. 12*] (2394-82)

292.14 CREDIT AGAINST INHERITANCE TAX. If a tax has been imposed on any gift under this chapter and thereafter upon the death of the donor an inheritance tax is imposed upon the same gift by this state, there shall be credited against the inheritance tax resulting from the inclusion of such gift in the computation of such inheritance tax an amount equal to the gift tax resulting from the inclusion of such gift in the computation of the gift tax on gifts from such donor to the donee who received such gift.

[*Ex. 1937 c. 70 s. 13*] (2394-83)