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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH  
SESSION

HOUSE FILE NO. **3756**

April 6, 2010

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

A bill for an act

relating to probate; providing certain rules of construction; making technical and clarifying changes to the estate tax; amending Minnesota Statutes 2008, section 289A.10, subdivision 1; Minnesota Statutes 2009 Supplement, section 291.005, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 524.

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

Section 1. Minnesota Statutes 2008, 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 federal gross estate exceeds ~~\$700,000 for estates of decedents dying after December 31, 2001, and before January 1, 2004; \$850,000 for estates of decedents dying after December 31, 2003, and before January 1, 2005; \$950,000 for estates of decedents dying after December 31, 2004, and before January 1, 2006; and \$1,000,000 for estates of decedents dying after December 31, 2005.~~

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

**EFFECTIVE DATE.** This section is effective for estates of decedents dying after December 31, 2005.

Sec. 2. Minnesota Statutes 2009 Supplement, section 291.005, subdivision 1, is amended to read:

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

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

2.5 (2) "Federal gross estate" means the gross estate of a decedent as required to  
2.6 be valued and otherwise determined for federal estate tax purposes ~~by federal taxing~~  
2.7 ~~authorities pursuant to the provisions of~~ under the Internal Revenue Code.

2.8 (3) "Internal Revenue Code" means the United States Internal Revenue Code of  
2.9 1986, as amended through March 31, 2009, but without regard to the provisions of  
2.10 sections 501 and 901 of Public Law 107-16.

2.11 (4) "Minnesota adjusted taxable estate" means federal adjusted taxable estate as  
2.12 defined by section 2011(b)(3) of the Internal Revenue Code, increased by the amount of  
2.13 deduction for state death taxes allowed under section 2058 of the Internal Revenue Code.

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

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

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

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

2.30 (9) "Situs of property" means, with respect to real property, the state or country in  
2.31 which it is located; with respect to tangible personal property, the state or country in which  
2.32 it was normally kept or located at the time of the decedent's death; and with respect to  
2.33 intangible personal property, the state or country in which the decedent was domiciled  
2.34 at death.

2.35 **EFFECTIVE DATE.** This section is effective the day following final enactment  
2.36 and applies regardless when the decedent died.

3.1       Sec. 3. [524.2-712] DECEDENTS DYING AFTER DECEMBER 31, 2009, AND  
3.2 BEFORE JANUARY 1, 2011; CONSTRUCTION OF CERTAIN FORMULA  
3.3 CLAUSES BY REFERENCE TO FEDERAL TRANSFER TAX LAW.

3.4       (a) A governing instrument, including a will or trust agreement, of a decedent who  
3.5 dies after December 31, 2009, and before January 1, 2011, that contains a formula or  
3.6 provision referring to the "unified credit," "estate tax exemption," "applicable exemption  
3.7 amount," "applicable credit amount," "applicable exclusion amount," "generation-skipping  
3.8 transfer tax exemption," "GST exemption," "marital deduction," "maximum marital  
3.9 deduction," "unlimited marital deduction," "inclusion ratio," "applicable fraction," or  
3.10 any section of the Internal Revenue Code relating to the federal estate tax or federal  
3.11 generation-skipping transfer tax, or that measures a share of an estate or trust by reference  
3.12 to federal estate taxes or federal generation-skipping transfer taxes, is deemed to refer to  
3.13 the federal estate tax and the federal generation-skipping transfer tax laws as they applied  
3.14 with respect to the estates of decedents dying on December 31, 2009. This paragraph does  
3.15 not apply to a governing instrument, including a will or trust agreement, that manifests  
3.16 an intent that a contrary rule applies if the decedent dies on a date on which there is no  
3.17 then-applicable federal estate or federal generation-skipping transfer tax.

3.18       (b) If the federal estate or federal generation-skipping transfer tax becomes effective  
3.19 before January 1, 2011, then the reference to January 1, 2011, in paragraph (a) instead  
3.20 refers to the first date on which the tax becomes legally effective.

3.21       (c) The personal representative, trustee, or any interested person under the governing  
3.22 instrument, including a will or trust agreement, may bring a proceeding to determine  
3.23 whether the decedent intended that a formula or provision described in paragraph (a) be  
3.24 construed with respect to the law as it existed after December 31, 2009. Such a proceeding  
3.25 must be commenced by December 31, 2011.

3.26       **EFFECTIVE DATE.** This section is effective on January 1, 2010.