

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
ESTATE AND FIDUCIARY TAX DIVISION

IN THE MATTER OF THE PROPOSED
ADOPTION OF AMENDMENTS TO AND
REPEAL OF THE RULE RELATING TO
INHERITANCE AND ESTATE TAX

STATEMENT OF NEED
AND REASONABLENESS

This document has been prepared as a verbatim presentation of the facts necessary to establish the statutory authority, need for and reasonableness of the proposed new rule. It is submitted pursuant to 9 MCAR Section 2.104 requiring a Statement of Need and Reasonableness.

Authority to Adopt the Rule

Minn. Stat. Section 291.31, Subd. 2, grants the Commissioner statutory authority to establish rules concerning the estate and inheritance taxes.

Statement of Need

The 1979 Legislature passed the Omnibus tax bill which included a repeal of the existing inheritance tax law replacing it with the Minnesota estate tax provisions. The bill was approved by the Governor on June 1, 1979, and became known as Laws 1979, Chapter 303. The estate tax provisions are contained in Article III of Chapter 303 and are effective for estates of decedents dying after December 31, 1979.

The adoption of an estate tax to replace the inheritance tax caused a significant change in the audit requirements. First of all, the number of estates required to file and pay a tax was reduced. The threshold of taxability was raised. Under the inheritance tax, a tax liability could occur if even \$500 passed to a person not related to the decedent. Under the estate tax a return was not required if the entire estate was less than \$161,000 in the first year, 1980.

Our estate tax is based on the federal estate tax laws. In most instances, questions of taxability are determined under federal law and rules without an independent Minnesota law. The starting point for the Minnesota estate tax is the federal gross estate. In determining the federal gross estate, most of the issues relating to taxability and valuation are addressed under the appropriate federal provisions. The statutory provisions which directed independent Minnesota determinations and established guidelines in these areas have been repealed. The proposed

repealer relates to portions of Minn. Stat. Chapter 291 which were repealed or amended by the 1979 amendments.

Rules Proposed for Repeal

Inh Tax 11-14: Transfers in Contemplation of Death

These rules relate to the provisions of Minn. Stat. § 291.01, subd. 1, clause 3, concerning transfers within three years prior to death. As this section was repealed for deaths on or after January 1, 1980, and the treatment of these transfers is controlled by federal law under the new provisions, these rules should also be repealed for deaths after 1979.

Inh Tax 19-30: Transfers Intended to Take Effect in Possession or Enjoyment At or After Death

The section relating to this series of rules, Minn. Stat. § 291.01, subd. 1, clause 3, was repealed for deaths on or after January 1, 1980, and these determinations are now made under federal code provisions and the related regulations.

Inh Tax 56: Tax Borne by Other Legatee

Under an inheritance tax the relationship of the beneficiaries to the decedent was significant due to the different rate and exemption schedules based on relationship. Under an estate tax, with the tax assessed against the estate itself without regard to relationships, tax payment clauses have no impact on the tax assessment. As a result, this rule no longer has significance or validity.

Inh. Tax 57: Bona Fide Contests

As with the tax payment clauses, since the relationship of the parties is of no consequence under an estate tax and since the marital deduction is determined under federal code provisions, this rule is obsolete for deaths after December 31, 1979.

Inh Tax 63-79: Powers of Appointment

These rules relate to the provisions of Minn. Stat. § 291.01, subd. 3, which were repealed for deaths on or after January 1, 1980. For deaths on or after that date, the determination as to whether certain powers of appointment are includable in the taxable estate is controlled by federal code provisions in the determination of the federal gross estate.

Inh Tax 86-88: Jointly Owned Property

These rules relate to the provisions of Minn. Stat. § 291.01, subd. 4, repealed for deaths on or after January 1, 1980. For deaths on or after that date, treatment of joint tenancy assets in a decedent's estate are controlled by federal code provisions.

Inh Tax 94-107: Insurance Proceeds

These rules relate to the provisions of Minn. Stat. § 291.01, subd. 5, which were repealed for deaths on or after January 1, 1980. Taxability of insurance proceeds now controlled by federal code provisions.

Inh Tax 111-116: Interests Passing by Inheritance or Survivorship

These rules explained the procedures and implications of disclaiming under Minnesota law. As part of the estate tax legislation, the disclaimer procedures for disclaiming for death tax purposes were distinguished from substantive law disclaimer procedures under Minnesota law. The amended Minn. Stat. § 291.111 reads: "An interest in real or personal property shall be treated as though such interest has been duly disclaimed in whole or in part if said interest is disclaimed pursuant to sections 2045 and 2518 of the Internal Revenue Code." As such, the procedures and implications of disclaimers are controlled by federal law for deaths on or after January 1, 1980.

Inh Tax 126-130: Life Estates: Remainders - Contingent Interests - Composition Agreements

These rules apply generally to situations where interests are split between beneficiaries or where interests passing to certain beneficiaries are contingent. Since under an estate tax, the relationship of the beneficiaries to the decedent are of no consequence, except that of surviving spouse, and since in the case of a surviving spouse, the marital deduction is determined under federal law, these rules are obsolete for deaths after December 31, 1979.

Inh Tax 136-137: Value of Certain Transfers Made by Decedent During Lifetime

These rules relate generally to the provisions of Minn. Stat. § 291.01, subd. 1, clause 3, which addressed the taxability of certain transfers made during decedents lifetime. This section was repealed for deaths after December 31, 1979, and the determination as to the taxability of these transfers is made under federal law in arriving at the federal gross estate.

Inh Tax 158-159: Deductions

These rules relate to deductions which are no longer allowed under Minnesota law. Minn. Stat. § 291.05, clause (3) (ii), relating to deductions for family maintenance was repealed for deaths after December 31, 1979. Minn. Stat. § 291.07, subd. 1, clause (6), which allowed a deduction for selection of personal property was also repealed effective the same date.

Inh Tax 174-181: Exemptions

This series of rules relate primarily to the provisions of

Minn. Stat. § 291.065, concerning the taxation of employee retirement plans. The provisions of this section were substantially amended as part of the 1979 legislation effective for deaths after December 31, 1979, and render these rules obsolete. The last two rules in this series cover the exemption in lieu of maintenance and exemptions for children. Both these exemptions were repealed by the 1979 legislature.

Inh Tax 186-188: Minnesota Estate Tax

These sections cover a concept no longer valid under current Minnesota law since the "pick-up" tax is now an integral part of the assessment procedural rather than an add on as under the inheritance tax.

Inh Tax 219: Release of Inheritance Tax Liens

The lien provisions of Minn. Stat. § 291.14 were repealed for deaths after December 31, 1979. This rule is obsolete for deaths after that date.

New Rule: 13 MCAR § 1.2220

Under the existing rule, Inh Tax 219, it was required that every safe deposit box be inventoried if a contracting party died. There was only one exception which is also included in clause C of this new rule. The inventory was performed by the county treasurer of a person designated by the treasurer. The inventory when forwarded to the commissioner was a valuable audit tool. It was used to verify that all assets were reported when a return was filed.

While still helpful, the procedures have been re-examined in light of the following changes.

1. Under current law, there is an unlimited marital exemption. All assets passing to a surviving spouse are exempt from federal and state estate taxes.

2. The minimum filing requirement for 1983 is \$275,000 and increases to \$600,000 in 1987. Fewer estates will be required to file a Minnesota return and still fewer will be subject to a tax liability.

3. The fiscal crunch has caused cutback in county offices and the availability of personnel to perform the inventories has been curtailed. This has caused delays in responding to requests for performing inventories.

Our proposed rule allows access, without an inventory, to a surviving spouse if the surviving spouse is the personal representative of the decedent's estate or the surviving spouse had a contractual right to enter the safe deposit box prior to decedent's death.

The depository must notify the county treasurer when access is permitted, but does not have to wait for an inventory.

It is important to note that the general rule still applies-- an inventory is required in all cases which is not covered by clauses B and C. In those instances not involving a surviving spouse, the audit potential of the inventory is greater. It is necessary and reasonable to continue the inventory requirements. The volume of inventories will be reduced significantly (how significantly it is impossible to pinpoint) and the remaining requirements will be less of a strain on county personnel.