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Major Changes to Minnesota Estate Tax Statutes

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In the past 12 months, much has been said about estate taxes. At the close of 2012, there was a looming fiscal cliff which brought the concept to the attention of many as conversations regarding estate and gift tax rates and exemption amounts were hotly debated. More recently, and more locally, Minnesotans were subject to big surprises which led to intriguing conversation about state estate and gift tax changes. The Minnesota Legislature enacted several major changes to the statutes governing estate taxes and created a gift tax during the 2013 Legislative session. Our brief summary of a few of these recent changes may be applicable to your clients' (or your) tax situation. As always, each situation is different and we are not providing you with tax advice; please consult with your tax adviser for information on how to manage these new taxes in your personal situation.

One of the lesser known changes in the Minnesota law has a very wide reach and effects real estate, as well as tangible personal property. The new provision applies to non-Minnesota residents holding property – specifically including real property – in pass-through entities when the property itself is located in Minnesota. This means that for the first time a non-resident may pay Minnesota estate tax on property held in a Limited Liability Company (LLC), S Corporation or a partnership. This change has the possibility of affecting many estate plans already in existence. For many years, residents of other jurisdictions (think snowbirds in Florida and Arizona or children who have transferred to another state) have used entities for holding their property in Minnesota for ease of transfer as well as for the financial advantages. Now these arrangements will need to be carefully evaluated from

multiple viewpoints. The statute as enacted expands the definition of real property as applied to the estate taxes to include “non-resident decedent with an ownership interest in a pass-through entity...” This significant change is codified at Minn. Stat. §291.005, subd. 1. There is a credit allowed for a decedent whose estate has paid taxes to another state on the same property. This applies both to non-residents who, at the time of death, own pass-through entities that own property located in Minnesota, or non-resident decedents who made gifts of similar pass-through entities within three years of death. See Minn. Stat. § 291.03. These new provisions are effective for the estate of a decedent dying on or after January 1, 2013.

The new gift tax has received wider attention and Minnesota is now one of only two states to impose a gift tax. Under the new statutory provisions, a donor must pay 10 percent of the amount of the gift as a gift tax. There is a lifetime credit of \$100,000, which is cumulative, essentially allowing the first \$1,000,000 of gifts by a donor to pass tax-free. Further, the definition of “taxable gift” follows the federal definition including the annual exclusion amount (currently \$14,000) and the corresponding federal deductions for gifts to spouses and charitable gifts. The gift tax provisions of this bill were effective for gifts made after June 30, 2013. This effective date is worth noting. The Minnesota Department of Revenue agrees that gifts made by a decedent who died in the first half of 2013 and made gifts in 2012, 2011 or 2010 will not be subjected to a tax that they did not anticipate and such gifts will not be pulled back into the estate for purposes of calculating estate taxes.

In addition, there is a new period, requiring that any three years of the donor’s life calculation of the gross estate purposes. This is effective for 30, 2013.

One final and significant legislative session applies to the estate tax exclusion for and family farms. In 2011, the exemption for small business up to \$4 million. This \$4 million there has been significant interests transferred in trust, of family members, material in trade or business, property replacement property rules.

retroactive to estates of decedents dying after June 30, 2011 and contain a number of technical requirements that must be met in order for people to take advantage of the estate tax benefits.

All in all, the federal estate tax landscape has gained some permanency as a result of legislative changes, and the significant Minnesota changes have forced the Department of Revenue to analyze and interpret the changes and to discuss and communicate these interpretations with tax payers and advisors.

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three year look-back gifts made in the last need to be included in the for Minnesota estate tax gifts made after June

change in the 2013 estate planning concerns, small business interests legislature enacted an and family farm interests threshold remains, but clarification to include as well to definitions participation, assets used tax classification, and These provisions are