Minnesota Department of Revenue

Revenue Notice # 17-XX: Estate Tax – Pass-Through Entities – Calculation of Minnesota Taxable Estate

Introduction

On May 22, 2013, the Minnesota Legislature enacted 2013 *Minnesota Laws*, chapter 143, article 7, section 4. The provision became effective January 1, 2013. This legislation modified the definition of the term "situs of property" for the purposes of the Minnesota estate tax.

Department Position

Estates of deceased individuals who were nonresidents of Minnesota are required to file for and pay Minnesota estate taxes when, during life, they owned real and tangible property having situs in Minnesota with a collective value exceeding the zero bracket amount provided for at *Minnesota Statutes* section 291.03, subdivision 1.

The 2013 legislation, codified at *Minnesota Statutes* section 291.005, subdivision 1, subparagraphs (9) and (10), requires that estates of nonresident individuals disregard the existence of "pass-through entities" in determining where real and tangible property has situs.

For the purposes if the Minnesota estate tax, "pass-through entity" is defined as follows:

> (i) an entity electing S corporation status under section 1362 of the Internal Revenue Code;
> (ii) an entity taxed as a partnership under subchapter K of the Internal Revenue Code;
>
> (iii) a single-member limited liability company or similar entity, regardless of whether it is taxed as an association or is disregarded for federal income tax purposes under *Code of Federal Regulations*, title 26, section 301.7701-3; or
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> (iv) a trust to the extent the property is includible in the decedent's federal gross estate; but excludes
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> (v) an entity whose ownership interest securities are traded on an exchange regulated by the Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act, *United States Code*, title 15, section 78f.
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> *Minnesota Statutes* section 291.005, subdivision 1(9) (2014).

Accordingly, estates of nonresident decedents dying after January 1, 2013 must include in Minnesota taxable estate the decedents' *pro rata* share of: 1) the value of any portion of real property located in Minnesota owned through an interest in a pass-through entity; and 2) the value of any portion of tangible property that was normally kept in Minnesota owned through an interest in a pass-through entity.

The statutory requirement that pass-through entities be disregarded in ascertaining the situs of real and tangible property is not applicable to the estates of individuals who were residents of Minnesota at the time of death. Accordingly, the estates of resident individuals must include in Minnesota

taxable estate: 1) the value of all real property located in Minnesota; 2) the value of all tangible property normally kept in Minnesota; and 3) the value of all intangible property including interests in pass-through entities regardless of such entities' holdings.

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RYAN CHURCH, Deputy Commissioner