

MINNESOTA LEGISLATIVE UPDATE
Minnesota State Bar Association
Probate and Trust Law Section Conference
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- I. Overview of passed legislation, proposals that will carry forward to the next session, and other items the estate planning bar ought to monitor. Relevant articles and/or sections of bills are included in conference materials.
- A. SF137/HF395
1. Passed in both chambers; signed by Governor on May 24, 2011.
 2. Section 3 amends Minn. Stat. § 524.2-712 to clarify that formula provisions in the wills and trusts of 2010 decedents will be presumed to refer to federal transfer tax law as it applied on December 31, 2009, notwithstanding the Tax Relief Act of 2010. It also expands upon the extrinsic evidence that may be submitted to a probate court to overcome the statutory presumption.
- B. HF1219/SF869
1. Passed in both chambers; signed by Governor on May 31, 2011.
 2. Section 1 of Article 2 amends Minn. Stat. § 289A.18, subdivision 3 to provide that estate tax returns for decedents who die from January 1, 2010 through December 16, 2010 will not be due until September 20, 2011.
 3. Section 5 of Article 2 repeals Minn. Stat. § 289A.38, subdivision 3 (which provides that estate taxes must be assessed within 180 days after an estate tax return has been filed), effectively extending the estate tax assessment period to 3.5 years after the return is filed. Section 2 of Article 2, in turn, adds paragraph (b) to Minn. Stat. Section 289A.35 and obligates the commissioner to notify an estate whether it will be closed or subjected to an audit within 9 months of filing the return.
 4. Section 4 of Article 2 amends Minn. Stat. § 291.03, subdivision 1b to clarify that for 2010 decedents *who elect out of the federal estate tax*, a Minnesota QTIP election is available, but only to the extent that it does not reduce the taxable estate below \$3,500,000.

C. Revenue Notice 10-03

1. Reiterates the Department of Revenue's position that for 2010 decedents, elections set forth in the Internal Revenue Code are not available for Minnesota purposes (e.g., special use valuation, qualified domestic trust treatment, etc.). However, the QTIP election is available for Minnesota purposes to the extent it does not reduce the taxable estate of a 2010 decedent below \$3,500,000.
2. Clarifies that for 2011 decedents and beyond, elections set forth in the Internal Revenue Code are available for Minnesota purposes, to the extent the estate files a federal estate tax return and makes the election at the federal level.

D. HF42/SF27

1. Passed in both chambers; vetoed by Governor on May 24, 2011.
2. Sections 11-15 of Article 1 would have introduced a qualified small business property or qualified farm property deduction of up to \$4,000,000 into the Minnesota estate tax.

E. HF1231/SF925

1. Introduced; referred to House Tax Committee.
2. Section 40 of Article 1 would have amended Minn. Stat. § 291.005, subdivision 1 to provide that the situs of real or tangible personal property in which a nonresident decedent has an interest will be determined without regard for any pass-through entity that holds title to such property.

F. HF951/SF654

1. Introduced, passed House Civil Law Committee, and referred to House Judiciary Committee.
2. House File No. 951 would resolve a conflict that has emerged among district courts and provide that a beneficial interest in a trust may be disclaimed after the beneficiary has accepted a distribution from a trust. Minn. Stat. § 524.2-1106 would specifically be amended to provide that acceptance of a distribution from a trust constitutes acceptance of only the property distributed and not the entire trust corpus.
3. This proposal will be carried forward into the second year of the biennium and the Legislation Committee will advocate for its enactment.

G. HF952/SF655

1. Introduced, passed House Civil Law Committee, and referred to House Judiciary Committee.
2. House File No. 952 constitutes a technical amendment to Minn. Stat. § 524.5-502 that would clarify that attorneys or health care professionals may be compensated for services rendered on behalf of guardians/wards or conservators/protected persons' estates.
3. This proposal will be carried forward into the second year of the biennium and the Legislation Committee will advocate for its enactment.

H. SF1177/no companion bill

1. Introduced; referred to Senate Judiciary Committee.
2. Senate File No. 1177 is comprised of the Uniform Disposition of Community Property Rights at Death Act.
3. This proposal will be carried forward into the second year of the biennium and the Legislation Committee, along with the Uniform Law Commissioners, will advocate for its enactment.

I. HF356/SF611

1. Introduced; referred to House Civil Law Committee.
2. House File No. 356 is a constituent-driven bill that establishes a cause of action for the intentional interference with an expectation of an inheritance.
3. This proposal will be carried forward into the second year of the biennium and we expect the bill authors to actively promote it. While the Legislation Committee does not expect to take a position on the proposal, it will provide technical assistance as the proposal is researched and amended.

J. HF1119/no companion bill

1. Introduced, passed House Civil Law Committee, and referred to House Judiciary Committee.
2. This proposal would reverse voter eligibility standards under Minn. Stat. § 201.014, subdivision 2 by creating a presumption that a person under guardianship does not have the right to vote.

K. SF587/no companion bill

1. Introduced; referred to Senate Judiciary Committee.
2. Senate File No. 587 would extend the time period during which a probate proceeding may be commenced from three years to six years after a decedent's death.

L. HF748/no companion bill

1. Introduced; referred to House Civil Law Committee.
2. House File No. 748 would establish a statutory trust for pets.

M. SF804/no companion bill

1. Introduced; referred to Senate Judiciary Committee
2. Section 8 of this proposal would amend Minn. Stat. § 524.5-502 to provide that if the individual seeking appointment of a guardian or conservator is the parent of the proposed ward or protected person, the court may order the parent to pay some or all of the fees, costs, or expenses associated with the proceeding that would otherwise be borne by the county.

1.1 A bill for an act
1.2 relating to real property; clarifying deeds to correct title and certain
1.3 acknowledgments; clarifying certain powers of court with respect to a probate
1.4 provision; providing for cancellation of residential purchase agreements;
1.5 clarifying redemption period for foreclosure of certain mortgages; clarifying an
1.6 effective date for certain child support judgments; amending Minnesota Statutes
1.7 2010, sections 272.15; 358.50; 524.2-712; 559.217, subdivisions 3, 4, 8; 580.23,
1.8 subdivision 2; Laws 2010, chapter 238, section 7, as amended.

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

1.10 Section 1. Minnesota Statutes 2010, section 272.15, is amended to read:

1.11 **272.15 DEED TO CORRECT TITLE.**

1.12 When a deed purporting to convey or quitclaim any parcel of land, the record title
1.13 to which appears to be in two or more persons, be a corrective deed is presented to the
1.14 county attorney, accompanied by an abstract of title to such the land described in the deed,
1.15 or other evidence deemed satisfactory by the county attorney, the attorney shall examine
1.16 such deed and, abstract, or other evidence presented, upon tender of a fee of \$5 therefor.
1.17 On finding that such deed is given for the purpose of correcting a defect in the title, or on
1.18 account of a technical error in a prior conveyance, the attorney shall so certify upon the
1.19 deed; and thereupon the county recorder shall record it, if otherwise entitled to record,
1.20 notwithstanding that there are unpaid taxes or assessments upon such land.

1.21 Sec. 2. Minnesota Statutes 2010, section 358.50, is amended to read:

1.22 **358.50 EFFECT OF ACKNOWLEDGMENT.**

1.23 An acknowledgment made in a representative capacity for and on behalf of a
1.24 corporation, partnership, limited liability company, trust, or other entity as defined in

2.1 section 358.41, clause (4), and certified substantially in the form prescribed in this chapter
2.2 is prima facie evidence that the instrument or electronic record was executed and delivered
2.3 with proper authority and as the act of the person or entity represented and identified in the
2.4 instrument or electronic record.

2.5 Sec. 3. Minnesota Statutes 2010, section 524.2-712, is amended to read:

2.6 **524.2-712 DECEDENTS DYING AFTER DECEMBER 31, 2009, AND**
2.7 **BEFORE JANUARY 1, 2011; FORMULA CLAUSES TO BE CONSTRUED TO**
2.8 **REFER TO FEDERAL ESTATE TAX AND FEDERAL GENERATION-SKIPPING**
2.9 **TRANSFER TAX LAWS.**

2.10 (a) A governing instrument, including a will or trust agreement, of a decedent who
2.11 dies after December 31, 2009, and before January 1, 2011, that contains a formula or
2.12 provision referring to the "unified credit," "estate tax exemption," "applicable exemption
2.13 amount," "applicable credit amount," "applicable exclusion amount," "generation-skipping
2.14 transfer tax exemption," "GST exemption," "marital deduction," "maximum marital
2.15 deduction," "unlimited marital deduction," "inclusion ratio," "applicable fraction," or
2.16 any section of the Internal Revenue Code relating to the federal estate tax or federal
2.17 generation-skipping transfer tax, or that measures a share of an estate or trust by reference
2.18 to federal estate taxes or federal generation-skipping transfer taxes, is deemed to refer to
2.19 the federal estate tax and federal generation-skipping transfer tax laws as they applied with
2.20 respect to the estates of decedents dying on December 31, 2009. This paragraph does not
2.21 apply to a governing instrument, including a will or trust agreement, that manifests an
2.22 intent that a contrary rule will apply if the decedent dies on a date on which there is no
2.23 then-applicable federal estate or federal generation-skipping transfer tax.

2.24 ~~(b) If the federal estate or federal generation-skipping transfer tax becomes effective~~
2.25 ~~before January 1, 2011, then the reference to January 1, 2011, in paragraph (a) is deemed~~
2.26 ~~to refer to the first date on which this tax becomes legally effective, instead of January 1,~~
2.27 ~~2011.~~

2.28 ~~(c)~~ (b) The personal representative, trustee, or any interested person under the
2.29 governing instrument, including a will or trust agreement, may bring a proceeding
2.30 to determine whether the decedent intended that a formula or provision described in
2.31 paragraph (a) be construed with respect to the law as it existed after December 31, 2009.
2.32 This proceeding must be commenced by December 31, 2011, and the court may consider
2.33 extrinsic evidence that contradicts the plain meaning of the will, trust, or other governing
2.34 instrument. The court may modify a provision of a will, trust, or other governing
2.35 instrument that refers to the federal estate tax or generation-skipping transfer tax laws as

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3.1 described in paragraph (a) to conform the terms to the decedent's intention, or achieve
3.2 the decedent's tax objectives in a manner that is not contrary to the decedent's probable
3.3 intention. The court may provide that its decision, including any decision to modify
3.4 a provision of a will, trust, or other governing instrument, is effective as of the date of
3.5 the decedent's death.

3.6 Sec. 4. Minnesota Statutes 2010, section 559.217, subdivision 3, is amended to read:

3.7 Subd. 3. **Cancellation with right to cure.** (a) If a default occurs or an unfulfilled
3.8 condition exists after the date specified for fulfillment in the terms of a purchase agreement
3.9 for the conveyance of residential real property, which does not by its terms cancel the
3.10 purchase agreement, the purchaser or the seller may initiate a cancellation by serving
3.11 upon the other party to the purchase agreement and any third party that is holding earnest
3.12 money under the purchase agreement a notice:

3.13 (1) specifying the residential real property that is the subject of the purchase
3.14 agreement, including the legal description;

3.15 (2) specifying the purchase agreement by date and names of parties, and the
3.16 unfulfilled condition or default; and

3.17 (3) stating that the purchase agreement will be canceled 15 days after service of the
3.18 notice upon the other party to the purchase agreement unless prior to the cancellation date
3.19 the party upon whom the notice is served complies with the conditions in default and
3.20 completes the unfulfilled conditions, including, if applicable, completion of the purchase
3.21 or sale of the residential real property according to the terms of the purchase agreement.

3.22 (b) The notice to initiate a cancellation under this subdivision must be served in the
3.23 manner provided in section 559.21, subdivision 4, paragraphs (a) and (b). The notice
3.24 required by this subdivision must be given notwithstanding any provisions in the purchase
3.25 agreement to the contrary.

3.26 (c) The purchase agreement is canceled unless, within 15 days after the service of
3.27 the notice upon the other party to the purchase agreement, the party upon whom the notice
3.28 was served fully complies with the conditions in default and completes the unfulfilled
3.29 conditions or secures from a court an order suspending the cancellation.

3.30 Sec. 5. Minnesota Statutes 2010, section 559.217, subdivision 4, is amended to read:

3.31 Subd. 4. **Declaratory cancellation.** (a) If an unfulfilled condition exists after the
3.32 date specified for fulfillment in the terms of a purchase agreement for the conveyance
3.33 of residential real property, which by the terms of the purchase agreement cancels the
3.34 purchase agreement, either the purchaser or the seller may confirm the cancellation by

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4.1 serving upon the other party to the purchase agreement and any third party that is holding
4.2 earnest money under the purchase agreement a notice:

4.3 (1) specifying the residential real property that is the subject of the purchase
4.4 agreement, including the legal description;

4.5 (2) specifying the purchase agreement by date and names of parties, and the
4.6 unfulfilled condition; and

4.7 (3) stating that the purchase agreement has been canceled.

4.8 (b) The notice to initiate a cancellation under this subdivision must be served in the
4.9 manner provided in section 559.21, subdivision 4, paragraphs (a) and (b). The notice
4.10 required by this subdivision may be given notwithstanding any provisions in the purchase
4.11 agreement to the contrary.

4.12 (c) The cancellation of the purchase agreement is complete, unless, within 15
4.13 days after the service of the notice upon the other party to the purchase agreement, the
4.14 party upon whom the notice was served secures from a court an order suspending the
4.15 cancellation.

4.16 Sec. 6. Minnesota Statutes 2010, section 559.217, subdivision 8, is amended to read:

4.17 Subd. 8. **Attorney as agent for service.** Any attorney authorized to serve the
4.18 notice of cancellation by a party initiating a cancellation under this section is designated
4.19 as the attorney who may receive service as agent for the party initiating the cancellation
4.20 of all summons, complaints, orders, and motions made in connection with an action by
4.21 the party upon whom the notice is served to restrain the cancellation, and any responsive
4.22 notice of cancellation as described in subdivision 2. Service in the action and service of a
4.23 responsive notice of cancellation may be made upon the party initiating the cancellation
4.24 by personal service or by mailing a copy of the process or notice to such party or to such
4.25 party's attorney, by first class mail, postage prepaid, to the address stated in the notice.
4.26 Service upon a party by first class mail shall be effective upon delivery to the address
4.27 stated in the notice.

4.28 Sec. 7. Minnesota Statutes 2010, section 580.23, subdivision 2, is amended to read:

4.29 Subd. 2. **12-month redemption period.** Notwithstanding the provisions of
4.30 subdivision 1 hereof, when lands have been sold in conformity with the preceding sections
4.31 of this chapter, the mortgagor, the mortgagor's personal representatives or assigns, within
4.32 12 months after such sale, may redeem such lands in accordance with the provisions
4.33 of payment of subdivision 1 thereof, if:

4.34 (1) the mortgage was executed prior to July 1, 1967;

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5.1 (2) the amount claimed to be due and owing as of the date of the notice of foreclosure
5.2 sale is less than 66-2/3 percent of the original principal amount secured by the mortgage;

5.3 (3) the mortgage was executed prior to July 1, 1987, and the mortgaged premises, as
5.4 of the date of the execution of the mortgage, exceeded ten acres in size;

5.5 (4) the mortgage was executed prior to August 1, 1994, and the mortgaged premises,
5.6 as of the date of the execution of the mortgage, exceeded ten acres but did not exceed 40
5.7 acres in size and was in agricultural use as defined in section 40A.02, subdivision 3;

5.8 (5) the mortgaged premises, as of the date of the execution of the mortgage,
5.9 exceeded 40 acres in size; or

5.10 (6) the mortgage was executed on or after August 1, 1994, and the mortgaged
5.11 premises, as of the date of the execution of the mortgage, exceeded ten acres but did
5.12 not exceed 40 acres in size and was in agricultural use. For purposes of this clause, "in
5.13 agricultural use" means that at least a portion of the mortgaged premises was classified
5.14 for ad valorem tax purposes as:

5.15 (i) class 2a agricultural homestead property under section 273.13, subdivision 23;

5.16 (ii) class 2b rural or agricultural nonhomestead property under section 273.13,
5.17 subdivision 23;

5.18 (iii) class 1b agricultural homestead property under section 273.13, subdivision
5.19 22; or

5.20 (iv) exempt wetlands under section 272.02, subdivision 11; or

5.21 (7) the mortgage qualifies as a reverse mortgage as defined in section 47.58.

5.22 Sec. 8. Laws 2010, chapter 238, section 7, as amended by Laws 2010, chapter 371,
5.23 section 5, is amended to read:

5.24 Sec. 7. **EFFECTIVE DATE; APPLICATION.**

5.25 Sections 2 and 3 are effective January 1, 2011. Sections 4 to 6 are effective ~~July~~
5.26 ~~1, 2011~~ January 1, 2013, and apply retroactively to child support judgments, including
5.27 judgments by operation of law, that have not expired before ~~July 1, 2011~~ January 1, 2013.

5.28 **EFFECTIVE DATE.** This section is effective the day following final enactment.

5.29 Sec. 9. **EFFECTIVE DATE.**

5.30 (a) Sections 4 to 6 are effective August 1, 2011, and apply to any Notice of
5.31 Cancellation of Purchase Agreement or Responsive Notice of Cancellation of Purchase
5.32 Agreement served on or after that date.

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- 6.1 (b) Section 7 is effective the day following final enactment and applies to
6.2 foreclosures of reverse mortgages in which the notice of foreclosure was published on or
6.3 after the effective date.

1.1 A bill for an act
1.2 relating to taxation; making policy, technical, administrative, and clarifying
1.3 changes to income, withholding, estate, property, sales and use, mortgage
1.4 registry, insurance, minerals, gasoline, lodging, tax increment financing, and
1.5 other various taxes and tax-related provisions; making changes to provisions
1.6 related to certain aids and delinquent tax liabilities; providing for inclusion of
1.7 property in a tax increment financing district in the city of Sauk Rapids; providing
1.8 a property tax exemption for certain fairgrounds property in St. Louis County;
1.9 authorizing issuance of debt by Anoka County; prohibiting certain agency
1.10 contracts for tax-related activities; making changes to certain tax increment
1.11 financing districts in the cities of Ramsey, Cohasset, and Lino Lakes; amending
1.12 Minnesota Statutes 2010, sections 69.031, subdivision 1; 116J.8737, subdivisions
1.13 1, 2, 4; 270.87; 270A.03, subdivisions 2, 7; 270A.07, subdivision 1; 270C.30;
1.14 270C.32, subdivision 3; 270C.34, subdivision 1; 270C.64; 270C.711; 272.02, by
1.15 adding a subdivision; 272.029, by adding a subdivision; 273.1231, subdivision 4;
1.16 273.124, subdivisions 1, 8, 14; 273.13, subdivisions 22, 23; 273.33, subdivision
1.17 2; 273.37, subdivision 2; 273.3711; 274.175; 278.05, subdivision 6; 282.01,
1.18 subdivisions 1a, 1c, 1d; 282.014; 282.12; 287.05, subdivision 2; 289A.08,
1.19 subdivisions 1, 7; 289A.12, by adding a subdivision; 289A.18, subdivision 3;
1.20 289A.25, subdivisions 1, 6, by adding a subdivision; 289A.26, subdivision
1.21 1; 289A.35; 289A.38, subdivision 5; 289A.50, subdivision 10; 289A.60,
1.22 subdivision 31; 290.01, subdivisions 19a, as amended, 19b; 290.06, subdivision
1.23 2c; 290.091, subdivision 2; 290.0922, subdivisions 2, 3; 290.095, subdivision
1.24 11; 291.03, subdivision 1b; 296A.083, by adding a subdivision; 296A.18,
1.25 subdivision 7, by adding a subdivision; 297A.61, subdivision 3; 297A.62, by
1.26 adding a subdivision; 297A.63, by adding a subdivision; 297A.668, subdivision
1.27 7, by adding a subdivision; 297A.71, subdivision 23; 297A.89, subdivision 2;
1.28 297B.08; 297L.15, by adding a subdivision; 298.28, subdivision 2; 383C.16,
1.29 subdivision 1; 383E.21; 469.176, subdivisions 4c, 4m; 469.1763, subdivision
1.30 2; 469.319, subdivision 5; Laws 1986, chapter 462, section 31, as amended;
1.31 Laws 2010, chapter 389, article 7, section 22; proposing coding for new law in
1.32 Minnesota Statutes, chapters 16C; 270C; 383C; repealing Minnesota Statutes
1.33 2010, sections 272.02, subdivision 34; 273.124, subdivision 10; 281.37; 289A.38,
1.34 subdivision 3; 290.06, subdivision 10; 290A.27; 296A.18, subdivision 9.

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

7.1 EFFECTIVE DATE. This section is effective for taxable years beginning after
7.2 December 31, 2010.

7.3 Sec. 9. Minnesota Statutes 2010, section 289A.50, subdivision 10, is amended to read:

7.4 Subd. 10. **Limitation on refund.** (a) If an addition to federal taxable income under
7.5 section 290.01, subdivision 19a, clause (1), is judicially determined to discriminate
7.6 against interstate commerce with respect to obligations of a certain character or type, the
7.7 legislature intends that the discrimination be remedied by adding to federal taxable income
7.8 interest on comparable obligations of Minnesota governmental units and Indian tribes to
7.9 federal taxable income. For purposes of this subdivision, "comparable obligation" means
7.10 obligations of the character or type that the court found to be unconstitutionally favored by
7.11 section 290.01, subdivision 19a, clause (1), whether based on the security for payment,
7.12 use of the proceeds, or any other factor identified as determinative by the court.

7.13 (b) This subdivision applies beginning with the taxable years that begin during the
7.14 calendar year in which the court's decision is final. Other remedies apply for previous
7.15 taxable years.

7.16 EFFECTIVE DATE. This section is effective the day following final enactment.

7.17

ARTICLE 2

7.18

DEPARTMENT POLICY: ESTATE TAX

7.19 Section 1. Minnesota Statutes 2010, section 289A.18, subdivision 3, is amended to
7.20 read:

7.21 Subd. 3. **Estate tax returns.** An estate tax return must be filed with the
7.22 commissioner within nine months after the decedent's death. Except in the case of the
7.23 estate of a decedent dying after December 31, 2009, and before December 17, 2010, then
7.24 an estate tax return must be filed with the commissioner within nine months after the
7.25 decedent's death; within the time provided by section 289A.19, subdivision 4; or before
7.26 September 20, 2011; whichever is later.

7.27 EFFECTIVE DATE. This section is effective for estates of decedents dying after
7.28 December 31, 2009.

7.29 Sec. 2. Minnesota Statutes 2010, section 289A.35, is amended to read:

7.30 **289A.35 ASSESSMENTS ON RETURNS.**

8.1 (a) The commissioner may audit and adjust the taxpayer's computation of federal
8.2 taxable income, items of federal tax preferences, or federal credit amounts to make them
8.3 conform with the provisions of chapter 290 or section 298.01. If a return has been filed,
8.4 the commissioner shall enter the liability reported on the return and may make any audit
8.5 or investigation that is considered necessary.

8.6 (b) The commissioner may audit and adjust the taxpayer's computation of tax under
8.7 chapter 291. In the case of a return filed pursuant to section 289A.10, the commissioner
8.8 shall notify the estate no later than nine months after the filing date, as provided by section
8.9 289A.38, subdivision 2, whether the return is under examination or the return has been
8.10 processed as filed.

8.11 EFFECTIVE DATE. This section is effective for estates of decedents dying after
8.12 December 31, 2010.

8.13 Sec. 3. Minnesota Statutes 2010, section 289A.38, subdivision 5, is amended to read:

8.14 Subd. 5. **False or fraudulent return; no return.** Notwithstanding the limitations
8.15 under subdivisions subdivision 1 and 3, the tax may be assessed at any time if a false or
8.16 fraudulent return is filed or when a taxpayer fails to file a return.

8.17 EFFECTIVE DATE. This section is effective for estates of decedents dying after
8.18 December 31, 2010.

8.19 Sec. 4. Minnesota Statutes 2010, section 291.03, subdivision 1b, is amended to read:

8.20 Subd. 1b. **Qualified terminable interest property.** For estates of decedents dying
8.21 after December 31, 2009, and before January 1, 2011, ~~if no federal estate tax return is~~
8.22 filed a federal election under section 301(c) of the Tax Relief, Unemployment Insurance
8.23 Reauthorization, and Job Creation Act of 2010, Public Law 111-312, is made, the executor
8.24 may make a qualified terminable interest property election, as defined in section 2056(b)(7)
8.25 of the Internal Revenue Code, for purposes of computing the tax under this chapter. The
8.26 election may not reduce the taxable estate under this chapter below \$3,500,000. The
8.27 election must be made on the tax return under this chapter and is irrevocable. All tax under
8.28 this chapter must be determined using the qualified terminable interest property election
8.29 made on the Minnesota return. For purposes of applying sections 2044 and 2207A of
8.30 the Internal Revenue Code when computing the tax under this chapter for the estate of
8.31 the decedent's surviving spouse, regardless of the date of death of the surviving spouse,
8.32 amounts for which a qualified terminable interest property election has been made under

9.1 this section must be treated as though a valid federal qualified terminable interest property
9.2 election under section 2056(b)(7) of the Internal Revenue Code has been made.

9.3 EFFECTIVE DATE. This section is effective for estates of decedents dying after
9.4 December 31, 2009.

9.5 Sec. 5. REPEALER.

9.6 Minnesota Statutes 2010, section 289A.38, subdivision 3, is repealed.

9.7 EFFECTIVE DATE. This section is effective for estates of decedents dying after
9.8 December 31, 2010.

9.9 **ARTICLE 3**

9.10 **DEPARTMENT POLICY: PROPERTY TAX**

9.11 Section 1. Minnesota Statutes 2010, section 270.87, is amended to read:

9.12 **270.87 CERTIFICATION TO COUNTY ASSESSORS.**

9.13 After making an annual determination of the equalized fair market value of the
9.14 operating property of each company in each of the respective counties, and in the taxing
9.15 districts therein, the commissioner shall certify the equalized fair market value to the
9.16 county assessor on or before June 30. The equalized fair market value of the operating
9.17 property of the railroad company in the county and the taxing districts therein is the value
9.18 on which taxes must be levied and collected in the same manner as on the commercial and
9.19 industrial property of such county and the taxing districts therein. If the commissioner
9.20 determines that the equalized fair market value certified on or before June 30 is in error,
9.21 the commissioner may issue a corrected certification on or before August 31.

9.22 EFFECTIVE DATE. This section is effective for taxes payable in 2012 and
9.23 thereafter.

9.24 Sec. 2. Minnesota Statutes 2010, section 272.029, is amended by adding a subdivision
9.25 to read:

9.26 Subd. 4a. Correction of errors. If the commissioner of revenue determines that
9.27 the amount of production tax has been erroneously calculated, the commissioner may
9.28 correct the error. The commissioner must notify the owner of the wind energy conversion
9.29 system of the correction and the amount of tax due to each county and must certify the
9.30 correction to the county auditor of each county in which the system is located on or before
9.31 April 1 of the current year.

APPENDIX
Article locations in H1219-3

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Department of Revenue

Revenue Notice # 10-03: Estate Tax – Estates Required to File a Minnesota Return but not a Federal Return – Revocation of Revenue Notice # 06-04

Introduction

In computing the Minnesota estate tax where an estate is required to file a Minnesota estate tax return and a federal estate tax return is not required, the Minnesota Department of Revenue's position is as provided below. This notice revokes and replaces Revenue Notice # 06-04.

For estates of decedents who die in 2010, this notice reflects a change to Minnesota Statutes since Revenue Notice # 06-04 was issued. This statutory change provides a qualified terminable interest property election for estates of decedents who die in 2010. This notice also reflects the Internal Revenue Code, which does not impose an estate tax on estates of decedents who die in 2010.

For estates of decedents who die in years other than 2010, this notice restates the position previously announced in Revenue Notice # 06-04.

For all estates, if the Internal Revenue Code or Minnesota Statutes change, the department's position may change.

Department Position

Abatement of Penalties

If the estate needs more time to meet the due date (9 months from date of death) for filing and paying the Minnesota estate tax, the Commissioner of Revenue will abate the penalties for late filing and late payment if the estate pays a "reasonable estimate" of the Minnesota estate tax by the due date (estate's payment should be made electronically or accompanied by Minnesota Form PV86). The estate must file the return and pay the remaining tax within 15 months of the decedent's date of death. For the purposes of this notice, a payment of 90 percent of the amount of Minnesota estate tax shown on the return will be presumed to be a "reasonable estimate."

Valuation Date

The estate must use the date of death values of assets since alternative value (value of asset six months from date of death) is not available. The alternative value cannot be elected federally (*Internal Revenue Code*, section 2032 (c)) since there will not be a federal tax using date of death value and Minnesota allows only alternative valuation if it is elected federally.

Elections

For estates of decedents who die in 2010, elections provided by the Internal Revenue Code are not available for Minnesota purposes. This includes the special land use valuation election (*Internal Revenue Code*, section 2032A) and qualified domestic trust election (*Internal Revenue Code*, section 2056A). However, to the extent provided by *Minnesota Statutes*, section 291.03, subdivision 1b, the qualified terminable interest property election (*Internal Revenue Code*, section 2056(b)(7)) is available. Minnesota limitations include that the qualified terminable interest property election is irrevocable and cannot reduce the taxable estate below \$3.5 million.


For estates of decedents who die in years other than 2010, elections provided by the Internal Revenue Code are only available for Minnesota purposes if the estate files a federal estate tax return and makes the election at the federal level. These elections include the special land use valuation election (*Internal Revenue Code*, section 2032A), qualified terminable interest property election (*Internal Revenue Code*, section 2056(b)(7)), and qualified domestic trust election (*Internal Revenue Code*, section 2056A).

Administrative Expenses

Deductions for administrative expenses of the estate that can be claimed on either the federal estate tax return or the estate's federal fiduciary income tax return can only be claimed on the Minnesota estate tax return if the expenses are not claimed as a deduction on the estate's federal fiduciary income tax return or returns (*Minnesota Statutes*, section 291.03).

Revenue Notice # 06-04 is revoked and replaced with this notice.

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ELIZABETH KADOUN, Assistant Commissioner
for Tax Policy and External Relations

1.1 A bill for an act
1.2 relating to the financing of state and local government; making changes to
1.3 individual income, corporate franchise, estate, property, aids, credits, payments,
1.4 refunds, sales and use, minerals, local, tax increment financing, insurance,
1.5 and other taxes and tax-related provisions; authorizing local taxes; modifying
1.6 sustainable forest resource management incentive; providing a science and
1.7 technology program; conforming to changes made to the Internal Revenue
1.8 Code; requiring commissioner of revenue to initiate negotiations for reciprocity
1.9 agreement with state of Wisconsin; setting the levels of the cash flow account
1.10 and the budget reserve account; reducing certain maintenance of effort
1.11 requirements; modifying powers of commissioner of revenue resulting from
1.12 temporary state shutdown; providing disaster relief; authorizing income tax
1.13 data sharing with Wisconsin; providing alternative process for consolidation
1.14 of counties; authorizing tobacco bonds; requiring studies; requiring reports;
1.15 appropriating money; amending Minnesota Statutes 2010, sections 16A.151,
1.16 subdivision 2; 97A.061, subdivision 1; 126C.01, subdivision 3; 270B.12,
1.17 by adding a subdivision; 270C.13, subdivision 1; 270C.991, subdivision 4;
1.18 272.02, subdivision 39, by adding subdivisions; 273.121, subdivision 1; 273.13,
1.19 subdivisions 23, as amended, 25, 34, by adding a subdivision; 273.1384,
1.20 subdivisions 3, 4; 273.1393; 275.025, subdivision 3; 276.04, subdivision 2;
1.21 289A.02, subdivision 7, as amended; 290.01, subdivisions 19, as amended, 19a,
1.22 as amended, 19c, as amended, 31, as amended; 290.05, subdivision 1; 290.0671,
1.23 subdivision 1; 290.0675, subdivision 1; 290.9201, subdivision 11; 290A.03,
1.24 subdivisions 11, 13, 15, as amended; 290A.04, subdivisions 2, 4; 290C.07;
1.25 291.005, subdivision 1; 291.03, subdivision 1, by adding subdivisions; 297A.61,
1.26 subdivision 3, as amended, by adding subdivisions; 297A.66, by adding a
1.27 subdivision; 297A.668, by adding a subdivision; 297A.68, subdivision 4, by
1.28 adding subdivisions; 297A.70, subdivisions 1, 2, 3, 6; 297A.75, subdivisions 1,
1.29 2, 3; 297A.99, subdivisions 1, 3; 297B.03; 297L.01, subdivisions 9, 16, by adding
1.30 subdivisions; 297L.05, subdivisions 7, 12; 297L.30, subdivisions 1, 2; 298.001,
1.31 by adding a subdivision; 298.01, subdivisions 3, 3a; 298.015, subdivisions
1.32 1, 2; 298.016, subdivision 4; 473.757, subdivision 11; 477A.011, subdivision
1.33 20; 477A.0124, by adding a subdivision; 477A.013, subdivision 9, by adding a
1.34 subdivision; 477A.03; 477A.11, subdivision 1; 477A.12, subdivision 1; 477A.14,
1.35 subdivision 1; Laws 1995, chapter 264, article 5, section 45, subdivision 1,
1.36 as amended; Laws 1996, chapter 471, article 2, section 29, subdivision 1, as
1.37 amended; Laws 1998, chapter 389, article 8, section 43, subdivisions 3, as
1.38 amended, 4, as amended, 5, as amended; Laws 2006, chapter 257, section 2;
1.39 Laws 2008, chapter 366, article 7, section 19, subdivision 3; Laws 2010, chapter

2.1 389, article 5, section 6, subdivision 1; Laws 2010, First Special Session chapter
2.2 1, article 13, section 4, subdivision 1; proposing coding for new law in Minnesota
2.3 Statutes, chapters 16A; 116W; 275; 373; repealing Minnesota Statutes 2010,
2.4 sections 273.1384, subdivisions 1, 6; 275.295; 290.0678; 290.9201, subdivision
2.5 3; 297I.05, subdivisions 9, 10; 298.017; 477A.145.

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

2.7

ARTICLE 1

2.8

INDIVIDUAL INCOME AND ESTATE TAXES

2.9 Section 1. Minnesota Statutes 2010, section 270B.12, is amended by adding a
2.10 subdivision to read:

2.11 Subd. 14. Wisconsin secretary of revenue; income tax reciprocity benchmark
2.12 study. The commissioner may disclose return information to the secretary of revenue
2.13 of the state of Wisconsin for the purpose of conducting a joint individual income tax
2.14 reciprocity study.

2.15 EFFECTIVE DATE. This section is effective the day following final enactment.

2.16 Sec. 2. Minnesota Statutes 2010, section 290.9201, subdivision 11, is amended to read:

2.17 Subd. 11. ~~Exception~~ Exemption from withholding for public speakers and tax.
2.18 ~~The provisions of (a) Subdivisions 7 and 8 shall not be effective for~~ do not apply to:

2.19 (1) compensation paid to nonresident public speakers, if the compensation paid to
2.20 the speaker is less than \$2,000 or is only a payment of the speaker's expenses; or

2.21 (2) compensation paid to an entertainment entity if the compensation paid to the
2.22 entertainment entity is less than \$600.

2.23 (b) Compensation paid to a public speaker or an entertainment entity that is not
2.24 subject to withholding tax under this subdivision is not subject to tax under subdivision 2
2.25 unless the total compensation received by the public speaker or entertainment entity in the
2.26 tax year exceeds the individual income tax filing requirements for a nonresident individual
2.27 under section 289A.08, subdivision 1, paragraph (a), clause (1).

2.28 EFFECTIVE DATE. This section is effective for compensation paid or received
2.29 after December 31, 2011.

2.30 Sec. 3. Minnesota Statutes 2010, section 291.005, subdivision 1, is amended to read:

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

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

3.3 (2) "Federal gross estate" means the gross estate of a decedent as required to be
3.4 valued and otherwise determined for federal estate tax purposes under the Internal
3.5 Revenue Code.

3.6 (3) "Internal Revenue Code" means the United States Internal Revenue Code of
3.7 1986, as amended through March 18, 2010, but without regard to the provisions of
3.8 sections 501 and 901 of Public Law 107-16.

3.9 (4) "Minnesota adjusted taxable estate" means federal adjusted taxable estate as
3.10 defined by section 2011(b)(3) of the Internal Revenue Code, ~~increased by plus~~

3.11 (i) the amount of deduction for state death taxes allowed under section 2058 of
3.12 the Internal Revenue Code; less

3.13 (ii) (A) the value of qualified small business property under section 291.03,
3.14 subdivision 9, and the value of qualified farm property under section 291.03, subdivision
3.15 10, or (B) \$4,000,000, whichever is less.

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

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

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

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

3.32 (9) "Situs of property" means, with respect to real property, the state or country in
3.33 which it is located; with respect to tangible personal property, the state or country in which
3.34 it was normally kept or located at the time of the decedent's death; and with respect to
3.35 intangible personal property, the state or country in which the decedent was domiciled
3.36 at death.

4.1 EFFECTIVE DATE. This section is effective for decedents dying after June 30,
4.2 2011.

4.3 Sec. 4. Minnesota Statutes 2010, section 291.03, subdivision 1, is amended to read:

4.4 Subdivision 1. **Tax amount.** (a) The tax imposed shall be an amount equal to the
4.5 proportion of the maximum credit for state death taxes computed under section 2011
4.6 of the Internal Revenue Code, but using Minnesota adjusted taxable estate instead of
4.7 federal adjusted taxable estate, as the Minnesota gross estate bears to the value of the
4.8 federal gross estate.

4.9 (b) The tax determined under this subdivision must not be greater than the sum of
4.10 the following amounts multiplied by a fraction, the numerator of which is the Minnesota
4.11 gross estate and the denominator of which is the federal gross estate:

4.12 (1) the rates and brackets under section 2001(c) of the Internal Revenue Code
4.13 multiplied by the sum of:

4.14 (i) the taxable estate, as defined under section 2051 of the Internal Revenue Code;
4.15 plus

4.16 (ii) adjusted taxable gifts, as defined in section 2001(b) of the Internal Revenue
4.17 Code; less

4.18 (iii) the lesser of (A) the sum of the value of qualified small business property
4.19 under subdivision 9, and the value of qualified farm property under subdivision 10,
4.20 or (B) \$4,000,000; less

4.21 (2) the amount of tax allowed under section 2001(b)(2) of the Internal Revenue
4.22 Code; and less

4.23 (3) the federal credit allowed under section 2010 of the Internal Revenue Code.

4.24 (c) For purposes of this subdivision, "Internal Revenue Code" means the Internal
4.25 Revenue Code of 1986, as amended through December 31, 2000.

4.26 EFFECTIVE DATE. This section is effective for decedents dying after June 30,
4.27 2011.

4.28 Sec. 5. Minnesota Statutes 2010, section 291.03, is amended by adding a subdivision
4.29 to read:

4.30 Subd. 8. Definitions. (a) For purposes of this section, the following terms have the
4.31 meanings given in this subdivision.

4.32 (b) "Family member" means a family member as defined in section 2032A(e)(2) of
4.33 the Internal Revenue Code.

5.1 (c) "Qualified heir" means a family member who acquired qualified property from
5.2 the decedent and satisfies the requirement under subdivision 9, clause (6), or subdivision
5.3 10, clause (4), for the property.

5.4 (d) "Qualified property" means qualified small business property under subdivision
5.5 9 and qualified farm property under subdivision 10.

5.6 **EFFECTIVE DATE.** This section is effective for decedents dying after June 30,
5.7 2011.

5.8 Sec. 6. Minnesota Statutes 2010, section 291.03, is amended by adding a subdivision
5.9 to read:

5.10 Subd. 9. **Qualified small business property.** Property satisfying all of the following
5.11 requirements is qualified small business property:

5.12 (1) The value of the property was included in the federal adjusted taxable estate.

5.13 (2) The property consists of the assets of a trade or business or shares of stock or
5.14 other ownership interests in a corporation or other entity engaged in a trade or business.

5.15 The decedent or the decedent's spouse must have materially participated in the trade or
5.16 business within the meaning of section 469 of the Internal Revenue Code during the
5.17 taxable year that ended before the date of the decedent's death. Shares of stock in a
5.18 corporation or an ownership interest in another type of entity do not qualify under this
5.19 subdivision if the shares or ownership interests are traded on a public stock exchange at
5.20 any time during the three-year period ending on the decedent's date of death.

5.21 (3) The gross annual sales of the trade or business were \$10,000,000 or less for the
5.22 last taxable year that ended before the date of the death of the decedent.

5.23 (4) The property does not consist of cash or cash equivalents. For property consisting
5.24 of shares of stock or other ownership interests in an entity, the amount of cash or cash
5.25 equivalents held by the corporation or other entity must be deducted from the value of
5.26 the property qualifying under this subdivision in proportion to the decedent's share of
5.27 ownership of the entity on the date of death.

5.28 (5) The decedent continuously owned the property for the three-year period ending
5.29 on the date of death of the decedent.

5.30 (6) A family member continuously uses the property in the operation of the trade or
5.31 business for three years following the date of death of the decedent.

5.32 (7) The estate and the qualified heir elect to treat the property as qualified small
5.33 business property and agree, in the form prescribed by the commissioner, to pay the
5.34 recapture tax under subdivision 11, if applicable.

6.1 EFFECTIVE DATE. This section is effective for decedents dying after June 30,
6.2 2011.

6.3 Sec. 7. Minnesota Statutes 2010, section 291.03, is amended by adding a subdivision
6.4 to read:

6.5 Subd. 10. Qualified farm property. Property satisfying all of the following
6.6 requirements is qualified farm property:

6.7 (1) The value of the property was included in the federal adjusted taxable estate.

6.8 (2) The property consists of a farm meeting the requirements of section 500.24,
6.9 and was classified for property tax purposes as the homestead of the decedent or the
6.10 decedent's spouse or both under section 273.124, and as class 2a property under section
6.11 273.13, subdivision 23.

6.12 (3) The decedent continuously owned the property for the three-year period ending
6.13 on the date of death of the decedent.

6.14 (4) A family member continuously uses the property in the operation of the trade or
6.15 business for three years following the date of death of the decedent.

6.16 (5) The estate and the qualified heir elect to treat the property as qualified farm
6.17 property and agree, in a form prescribed by the commissioner, to pay the recapture tax
6.18 under subdivision 11, if applicable.

6.19 EFFECTIVE DATE. This section is effective for decedents dying after June 30,
6.20 2011.

6.21 Sec. 8. Minnesota Statutes 2010, section 291.03, is amended by adding a subdivision
6.22 to read:

6.23 Subd. 11. Recapture tax. (a) If, within three years after the decedent's death and
6.24 before the death of the qualified heir, the qualified heir disposes of any interest in the
6.25 qualified property, other than by a disposition to a family member, or a family member
6.26 ceases to use the qualified property which was acquired or passed from the decedent, an
6.27 additional estate tax is imposed on the property.

6.28 (b) The amount of the additional tax equals the amount of the exclusion claimed by
6.29 the estate under subdivision 8, paragraph (d), multiplied by 16 percent.

6.30 (c) The additional tax under this subdivision is due on the day which is six months
6.31 after the date of the disposition or cessation in paragraph (a).

6.32 EFFECTIVE DATE. This section is effective for decedents dying after June 30,
6.33 2011.

7.1 **Sec. 9. INCOME TAX RECIPROCITY BENCHMARK STUDY.**

7.2 (a) The Department of Revenue, in conjunction with the Wisconsin Department of
7.3 Revenue, must, provided the conditions of paragraph (d) are satisfied, conduct a study to
7.4 determine at least the following:

7.5 (1) the number of residents of each state who earn income from personal services in
7.6 the other state;

7.7 (2) the total amount of income earned by residents of each state who earn income
7.8 from personal services in the other state; and

7.9 (3) the change in tax revenue in each state if an income tax reciprocity arrangement
7.10 were resumed between the two states under which the taxpayers were required to pay
7.11 income taxes on the income only in their state of residence.

7.12 (b) The study must use information obtained from each state's income tax returns
7.13 for tax year 2011, and from any other source of information the departments determine is
7.14 necessary to complete the study.

7.15 (c) No later than March 1, 2013, the Department of Revenue must submit a report
7.16 containing the results of the study to the governor and to the chairs and ranking minority
7.17 members of the legislative committees having jurisdiction over taxes, in compliance with
7.18 Minnesota Statutes, sections 3.195 and 3.197.

7.19 (d) The department shall conduct the study only if the commissioner of revenue
7.20 receives notice from the secretary of revenue that the Wisconsin Department of Revenue
7.21 will fully participate in the study.

7.22 **EFFECTIVE DATE.** This section is effective the day following final enactment.

7.23 **Sec. 10. ESTATE TAX; STUDY.**

7.24 (a) The commissioner of revenue shall conduct a study of the Minnesota estate tax.
7.25 The study must include at least the following elements:

7.26 (1) evaluation of the estate tax using standard tax policy principles and methods of
7.27 analysis;

7.28 (2) consideration of the implications of recent federal estate tax changes, including
7.29 the repeal of the federal credit for state death taxes, the increase in the federal exclusion
7.30 amount, and the portability of the federal exclusion, for state estate and inheritance taxes;

7.31 (3) consideration of the advantages and disadvantages of revenue neutral alternatives
7.32 to the estate tax, such as an inheritance tax, a complementary gift tax, or imposition of
7.33 the income tax on bequests; and

8.1 (4) analysis of the available empirical evidence on the effects of the present and
8.2 alternative tax structures of a Minnesota tax on estates or inheritances on domicile and
8.3 migration decisions of residents and the implications for state revenues.

8.4 (b) In preparing the study, the commissioner shall consult with and seek advice from
8.5 the probate and estate section of the Minnesota State Bar Association.

8.6 (c) By February 1, 2013, the commissioner shall submit a report to the chairs and
8.7 ranking minority members of the house of representatives and senate committees with
8.8 jurisdiction over taxation, in compliance with Minnesota Statutes, sections 3.195 and
8.9 3.197, of the findings of the study and identification of issues for policy makers to consider
8.10 in deciding whether to revise, reform, replace, or repeal the estate tax.

8.11 **EFFECTIVE DATE.** This section is effective the day following final enactment.

8.12 **Sec. 11. NEW RECIPROCITY AGREEMENT WITH WISCONSIN.**

8.13 (a) The commissioner of revenue shall initiate negotiations with the secretary of
8.14 revenue of Wisconsin, with the objective of entering into an income tax reciprocity
8.15 agreement effective for tax years beginning after December 31, 2011.

8.16 (b) At least 30 days before entering a final income tax reciprocity agreement with
8.17 Wisconsin, the commissioner of revenue shall provide a copy of the proposed agreement
8.18 and any supporting documentation, including an estimate of the impact of the agreement
8.19 on state revenues, to the chairs and ranking minority members of the committees of the
8.20 house of representatives and senate with jurisdiction over taxes. The commissioner shall
8.21 consider any comments on the proposed agreement provided by the chairs or ranking
8.22 minority members.

8.23 **EFFECTIVE DATE.** This section is effective the day following final enactment.

8.24 **Sec. 12. APPROPRIATIONS.**

8.25 \$291,000 in fiscal year 2012 and \$314,000 in fiscal year 2013 are appropriated from
8.26 the general fund to the commissioner of revenue for the income reciprocity benchmark
8.27 study required under section 9. The appropriations under this section are onetime and
8.28 are not added to the agency's base budget.

8.29 **EFFECTIVE DATE.** This section is effective the day following final enactment.

8.30 **Sec. 13. REPEALER.**

8.31 (a) Minnesota Statutes 2010, section 290.0678, is repealed.

8.32 (b) Minnesota Statutes 2010, section 290.9201, subdivision 3, is repealed.