

# HOUSE RESEARCH

## Bill Summary

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### Overview

This bill clarifies that the Minnesota estate tax continues to apply during periods when the federal estate tax is not in effect. In addition, it provides a rule of construction for formula clauses in estate planning documents that are tied to the federal estate tax or its terms. This rule of construction presumes these references refer to the federal tax as it was in effect on December 31, 2009. This rule only applies if the documents do not indicate a contrary intent. The personal representative, trustee, or interested parties can request a court to make an alternative construction.

#### Section

- 1** **Obsolete language.** Eliminates statutory references to exemption amounts under the estate tax that applied to decedents dying before January 1, 2006.
- 2** **Clarification of application of estate tax.** Provides that the definition of the Internal Revenue Code and that estate tax valuation rules under the Code for purposes of the Minnesota estate tax apply, regardless of whether the federal estate tax is imposed or not.

**Background.** The Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”) provided that the federal estate tax does not apply to estates of decedents dying during calendar year 2010. Legislative enactments and actions by the administration have made it clear that the Minnesota estate tax continues to apply, even if the federal estate tax does not. This section clarifies that by excluding from the definition of the Internal Revenue Code the two provisions of EGTRRA that provide for the one-year sunset of the estate tax and by repealing a reference that implies federal tax authorities are somehow involved in valuing property for Minnesota estate tax purposes. The latter provision is obsolete, since Minnesota has had a lower exemption amount than the federal tax since 2002. This means that some estates have been subject to Minnesota tax, but are exempt from federal tax. For many of these estates federal tax authorities would have no role in determining valuations.

**3 Construction of formula clauses in estate planning documents.** Provides a default rule of construction for formula clauses and related provisions of various estate planning documents that refer to provisions or terms of the federal estate tax. This rule of construction applies only to documents if the:

- Decedent died during calendar year 2010; and
- Federal estate tax was not in effect (e.g., the rule would not apply to a period if Congress reenacts the federal estate tax for all or part of calendar year 2010).

This rule of construction essentially provides that – unless the document indicates a contrary intent – the references to the federal estate tax or estate tax terms refer to the federal tax in effect on December 31, 2009. The section also authorizes the personal representative, trustee, or another interested person to bring a proceeding to determine the intent. These proceedings must be brought by December 31, 2011.

**Background.** This provision is intended to address situations where decedents and their estate planners did not update formula clauses of wills and trusts to reflect the temporary sunset of the federal estate tax during calendar year 2010. (Most observers did not expect Congress to allow the estate tax to temporarily lapse and, thus, many of these documents were not redrafted to address that situation.) Because planners often structure estate plans to fully utilize the federal exemption amount on the death of the first spouse, this can or will cause unintended results. In particular, it could cause under a literal reading of these clauses all of the estate to pass into a “by-pass trust” or “credit shelter trust” with the result that no assets will pass to the marital trust for the surviving spouse. This would occur if the clause, for example, provides that the maximum amount that avoids federal tax is to be put into one of these trusts. This provision effectively assumes that most decedents intended to put the amount of the 2009 federal exemption amount (\$3.5 million) in one of these trusts, rather than the entire estate.

The provision would not apply to documents that anticipated the sunset of the federal tax or that otherwise indicate a contrary intent. In addition, interested parties could bring court proceedings to show that the decedent intended a different result in executing the relevant documents.