PRODUCT & SERVICE GUIDE

New gift tax in Minnesota starts on July 1

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A state gift tax, set to take effect Monday, makes Minnesota only the second state in the country to tax large gifts between residents. But large means $1 million or more over a lifetime, meaning most Minnesotans won't be affected by it.

Those that are affected will find will find themselves being charged for transferring things such as lake homes, boats and family businesses to relatives.

The tax was part of the omnibus tax bill the state Legislature approved during its 2013 session.

"It definitely doesn't apply to the majority of people in the state," said Cameron Seybolt, an estate lawyer with Minneapolis-based Fredrikson & Byron. "If you're never going to give away more than $1 million in your entire life, then you probably don't care about this tax."

The new law is similar to, and imposed in addition to, a federal gift-tax law. Both place a 10 percent tax on gifts worth more than $14,000 to a single recipient in a single year. However, a $100,000 lifetime credit in Minnesota means one would have to give taxable gifts worth more than $1 million before actually incurring any gift tax liability. This lifetime "floor" for the federal tax to kick in is $5.2 million.

In Connecticut, the other U.S. state that taxes gifts, the tax doesn't kick in until the donor reaches $2 million of lifetime giving. In both states, the payer must

pay both the federal and state gift taxes.

And there are a few exceptions as well. Married couples can elect to combine their $14,000. They would then have to give gifts totaling $28,000 to trigger the tax. They can also elect to combine their $100,000 lifetime credits.

Furthermore, gifts between spouses are exempted from the tax, as well as certain direct payments made on medical bills or educational expenses. Charitable contributions are also exempted.

The Minnesota Department of Revenue expects the new tax will generate about $13.5 million in 2014.

The law closes a loophole in Minnesota's estate tax law, said Susan Von Mosch, deputy assistant commissioner of tax policy.

Until now, wealthy residents hoping to avoid paying the generally 10 percent estate tax could simply distribute their assets as gifts to the family before they died, instead of as a bequest.

"A lot of people have the view that the gift tax isn't to generate revenue — that it's intended primarily to discourage people from trying to avoid the estate tax," Seybolt said. "It really is going to limit this sort of last-minute death-bed planning."

Minnesota's estate tax varies based on the size of the estate, but Seybolt says it usually averages out to about 10 percent with a $1 million exemption. On the largest estates, the rate can reach 16 percent.

Also passed during the 2013 session were two changes to the estate tax that will make it even harder for Minnesota residents to avoid it.

First, the estates of non-residents who own real estate or tangible property located in Minnesota as part of a pass-through entity, like a limited liability company or a partnership, will now be subject to Minnesota's estate tax. Assets of this type were not previously subject to Minnesota's estate tax.

Second, the estate tax will be expanded to apply to any taxable gifts given by the deceased in the three years before he or she died, dating back to Jan. 1, 2013.

Brad Weber, a Minneapolis-based financial adviser with wealth management firm Aspiriant, said the passage of the gift tax and the modifications to the estate tax, coupled with the new state income tax bracket for top earners approved during the 2013 legislative session, have left many of his clients — most of whom have a high net worth — feeling singled out.

"My whole client list, frankly, will eventually be impacted," Weber said. "They feel like it's just being piled on."

Weber says many of his clients have been scrambling to set up trusts in the names of their children in advance of July 1, to avoid paying the gift tax or estate tax on the transfer later.

A few are even considering moving across the St. Croix River into Wisconsin, which has neither an estate tax nor a gift tax.

But it's not just the wealthy who will be affected by the changes in the law, Seybolt, the Fredrikson & Byron attorney, said. Business owners hoping to pass their businesses down to their children before they die will now have to pay a gift tax to do so if the business is valued at more than $1 million.

Weber says he and his clients felt blindsided by the changes to the law, particularly the gift tax.

"This gift tax kind of came out of nowhere," he said. "It wasn't hotly debated at the Capitol. It left a lot of people wondering if it wasn't very well though out."

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