

S.F. No. 3671 – Portability of deceased spouse’s unused exclusion amount (as proposed to be amended by the A-1 amendment)

Author: Senator Julia Coleman

Prepared by: Nora Pollock, Senate Counsel (651/297-8066)

Date: March 9, 2022

Minnesota allows a \$3 million subtraction for purposes of calculating the Minnesota taxable estate, so that up to \$3 million is exempt from tax. In the case of married couples, the \$3 million exclusion amount applies for purposes of calculating the taxable estate of the first-deceased spouse. If the estate is less than \$3 million, the “unused” amount does not transfer to the surviving spouse for purposes of the calculating the surviving spouse’s estate tax liability. This bill allows spouses to elect to transfer, or “port”, the amount of the deceased spouse’s unused exclusion (DSUE) to the surviving spouse for purposes of calculating the surviving spouse’s estate tax liability. Portability would only be allowed if the election is timely made. This bill also makes technical changes to remove obsolete provisions of the estate tax chapter relating to the exclusion amount, calculating the taxable estate, and calculating estate tax.

Section 1. Return required. Strikes obsolete language regarding the phased-in estate tax exclusion for purposes of the filing requirement for estate tax returns. A return is required to be filed if either a federal return is required to be filed, or if the sum of the federal gross estate and adjusted taxable gifts made within three years of the decedent’s date of death exceeds \$3 million. Effective the day following final enactment.

Section 2. Election of portability of deceased spousal unused exclusion amounts; election irrevocable; deemed elections. Requires the personal representative of a decedent’s estate to elect to allow the decedent’s surviving spouse to use the DSUE as calculated in a later section. The election is irrevocable. The election is deemed to have been made when the return required under section 1 is filed unless the representative affirmatively states that the decedent’s estate is not electing portability. Effective the day following final enactment.

Section 3. Election of portability of deceased spousal unused exclusion amounts when election not required. Provides that a personal representative of a decedent’s estate that is not required to file a return under section 1 to elect to allow the decedent’s surviving spouse to use the DSUE as calculated in a later section. Effective the day following final enactment.

Section 4. Subtraction. Strikes obsolete language regarding the phased-in estate tax exclusion amount and the qualified small business property and farm property subtraction amount. Allows a surviving spouse an additional subtraction for purposes of calculating the surviving spouse's taxable estate equal to the lesser of \$3 million or the amount of the deceased spouse's unused exclusion. Effective for estates of decedents dying after June 30, 2022.

Section 5. Tax amount. Strikes obsolete language for calculating the estate tax during years the years the exclusion amount was phased in. Effective the day following final enactment.