

REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 2016 Iowa Code section 421.14, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 89, “Fiduciary Income Tax,” Iowa Administrative Code.

The subject matter of paragraph 89.8(8)“g” is the “no double deduction” rule as it applies to deductions from fiduciary income tax. Paragraph 89.8(8)“g” clarifies how the federal “no double deduction” rule applies to Iowa fiduciary income tax. The federal “no double deduction” rule under IRC Section 642(g) states that certain deductions for administration expenses taken on the federal estate tax return may not be deducted on the federal fiduciary income tax return. The basis for Iowa fiduciary taxable income is federal fiduciary taxable income with adjustments provided in the Iowa Code. Only deductions allowed on the federal fiduciary income tax return are allowed on the Iowa fiduciary income tax return unless there is a specific provision in the Iowa Code stating otherwise.

2015 Iowa Acts, chapter 125, section 1, (“the Act”) created a specific deduction from Iowa fiduciary income tax for administrative expenses not allowed on the federal fiduciary income tax return. The Act applies to all Iowa fiduciary income tax returns filed for tax years ending on or after July 1, 2015. This proposed amendment to paragraph 89.8(8)“g” updates the “no double deduction” rule to correspond with the change made by the Act.

Any interested person may make written suggestions or comments on the proposed amendment on or before May 31, 2016. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue at (515)281-8450 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by May 31, 2016.

After analysis and review of this rule making, the Department expects fiduciary income tax revenues to decrease as a result of the increased amount allowed as a deduction on the Iowa fiduciary income tax return.

Any person who believes that the application of the discretionary provisions of this amendment would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

After analysis and review of this rule making, no adverse impact on jobs has been found.

This amendment is intended to implement Iowa Code subsection 422.7(58).

The following amendment is proposed.

Amend paragraph **89.8(8)“g”** as follows:

g. The no double deduction rule. Expenses of administration, certain debts of the decedent like medical expenses incurred prior to death and losses during the period of administration are proper deductions in computing both the taxable income of an estate or trust (or on the decedent’s individual return in case of medical expenses) and the taxable estate for federal estate tax purposes under 26 U.S.C. Sections 2053 and 2054. The no double deduction rule only applies to trusts when the trust assets are included for federal estate tax purposes. 26 U.S.C. Section 642(g) prohibits the double deduction of those items which qualify as deductions for both taxes. To prevent the double deduction, it is a prerequisite for the allowance of the deduction for income tax purposes that a statement be filed with the fiduciary return of income waiving the right to claim the item or portion of the item as a

deduction on the federal estate tax return. The waiver once filed with the fiduciary return of income is irrevocable. However, unless the waiver has been filed, the decision to claim the deduction or portion of the deduction on the federal estate tax return can be changed anytime prior to the time the item or portion of the item is finally allowed for federal estate tax purposes.

The waiver requirement has no application to estates and trusts not required to file a federal estate tax return.

The no double deduction rule has no application to deductions in respect of a decedent, such as deductions relating to trade or business expenses, interest, taxes, expenses for the production of income and the allowance for depletion, which are deductible both for income tax purposes and federal estate tax purposes. See 26 U.S.C. Section 691(b) and ~~federal regulations~~ 26 CFR Section 1.691(b)-1 for what constitutes deductions in respect of a decedent.

The no double deduction rule does not apply to the deduction of an item for Iowa inheritance tax purposes. Items are deductible or not in computing the taxable shares for Iowa inheritance tax purposes by reference alone to Iowa Code chapter 450.

Assuming an item is otherwise deductible for income and inheritance tax purposes, the no double deduction rule has the following applications for Iowa income and inheritance tax:

1. ~~For estates~~ Estates and trusts not required to file a federal estate tax return, ~~an item is deductible~~ can claim the item as a deduction on both the Iowa inheritance tax return and the Iowa fiduciary income tax purposes return.

2. Estates For tax years ending before July 1, 2015, estates and trusts required to file a federal estate tax return can always claim the item as a deduction on the Iowa inheritance tax return. In addition, the same item or portion of the item is a deduction ~~for~~ on the Iowa fiduciary income tax purposes return if the item or portion of the item is not claimed as a deduction on the federal estate tax return. If it is claimed as a deduction on the federal estate tax return, it is not deductible ~~for~~ on the Iowa fiduciary income tax purposes return.

3. For tax years ending on or after July 1, 2015, estates and trusts required to file a federal estate tax return can claim the item as a deduction on the Iowa inheritance tax return and the Iowa fiduciary income tax return, regardless of whether the item or a portion of the item was claimed on the federal estate tax return.

This ~~rule~~ paragraph applies both to estates and trusts with a situs within and without Iowa.