INFORMATION BRIEF
Research Department
Minnesota House of Representatives
600 State Office Building
St. Paul, MN 55155

Joel Michael, Legislative Analyst
joel.michael@house.mn

Updated: July 2018

Survey of State Estate, Inheritance, and Gift Taxes

This information brief provides background information on state estate, inheritance, and gift taxes. The District of Columbia and 17 states, including Minnesota, impose one or more of these taxes. The District of Columbia and 11 states, including Minnesota, impose estate taxes, five states impose inheritance taxes, and Maryland imposes both an estate and inheritance tax. Connecticut imposes a gift tax (in addition to an estate tax).

Contents

Executive Summary

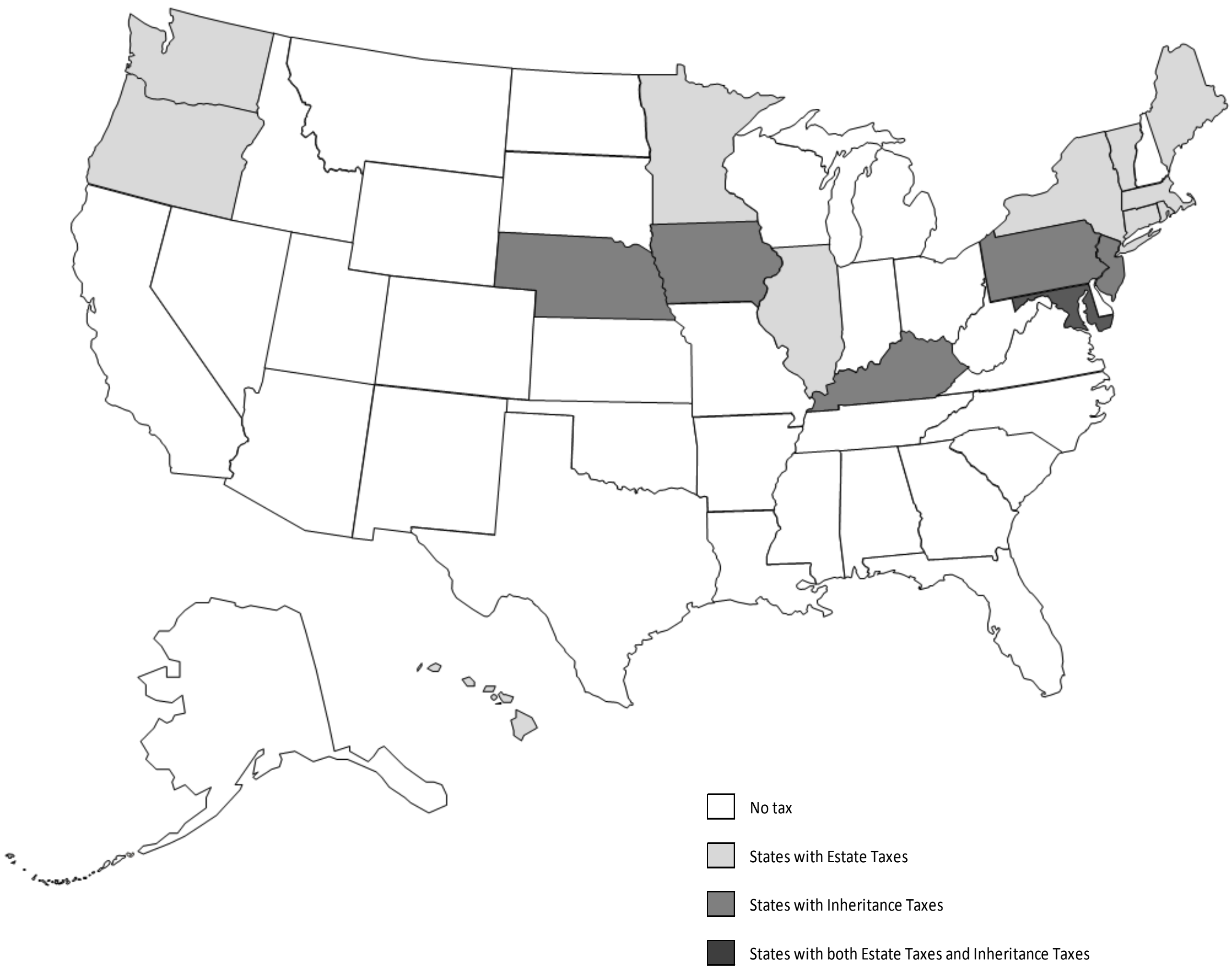
Estate, inheritance, and gift taxes are imposed on transfers of property. Estate and inheritance taxes are imposed when the property transfer is caused or triggered by the owner's death. Estate taxes apply tax rates to an aggregate measure of the decedent's property, while inheritance taxes apply tax rates that vary with the number and type of recipients of the bequests (more remote relatives and unrelated individuals typically are subject to higher rates). No state estate or inheritance taxes apply to amounts left to surviving spouses. Gift taxes are imposed when the property owner is still living and transfers the property.

State estate, inheritance, and gift taxes have undergone significant changes since Congress repealed the federal credit for state death taxes in 2001. That credit effectively paid a large portion of these taxes for states. For deaths in 2018, 33 states do not impose these taxes. Table 1 and the map show the states that impose these taxes.

Table 1

State Estate, Inheritance, and Gift Taxes	
States with Estate Taxes – 11 States and D.C.	
Connecticut	Minnesota
District of Columbia	New York
Hawaii	Oregon
Illinois	Rhode Island
Maine	Vermont
Massachusetts	Washington
States with Inheritance Taxes – 5 States	
Iowa	New Jersey
Kentucky	Pennsylvania
Nebraska	
States with Both Estate and Inheritance Taxes – 1 State	
Maryland	
States with Gift Taxes – 1 State	
Connecticut	

State Estate and Inheritance Taxes



The exemption amounts for the state taxes are lower than the exclusion under the federal estate tax, which the 2017 Congress temporarily increased to $11.18 million beginning for 2018 deaths (indexed for inflation). Of the states with estate taxes, exemption amounts range from $5.6 million (Hawaii and Maine) to $1 million (Massachusetts and Oregon) for 2018 deaths. The District of Columbia zero bracket amount is linked to the new federal exclusion amount of $11.18 million. Several states have recently increased their exemption amounts (some of these increases are still being phased in). Several states have also recently enacted additional deductions or exemptions for farm and business property.

Exemption amounts under inheritance taxes are much lower than under estate taxes (none exceed $100,000). Only the Nebraska and Pennsylvania inheritance taxes apply to amounts left to lineal heirs (children, grandchildren, or parents).

Introduction

State estate, inheritance, and gift taxes have undergone significant changes since Congress repealed the federal credit for state death taxes in 2001 (fully effective for 2005 deaths). After the credit's repeal, many states allowed their state estate taxes to expire, while others repealed or reduced their taxes. The Great Recession and its impact on state revenues and budgets caused three states to reinstate their taxes. In the period after the end of the recession, six states have repealed their estate or inheritance taxes. This brief surveys state estate, inheritance, and gift taxes, providing some detail on their exemption amounts, rates, and other features of state taxes.

A Taxonomy of the Taxes

Estate and inheritance taxes are imposed on transfers that occur upon the death of the owner of the property, while gift taxes are imposed on gifts made during the transferor's lifetime ("inter vivos" gifts).

- **Estate taxes** generally apply a single rate schedule to the taxable value of the decedent's total estate (bequests to charities and surviving spouses are typically exempt).
- **Inheritance taxes** apply varying rate schedules to bequests made to different classes of beneficiaries. Bequests to lineal heirs typically enjoy lower rates or are totally exempt, while bequests to more distant or unrelated heirs (collateral heirs) are usually taxed at higher rates. Taxes are legally imposed on the heirs, although are paid by the estates.
- **Gift taxes** complement estate and inheritance taxes, preventing property owners from avoiding tax by making lifetime gifts. Most states impose tax only on gifts made a short time before death or "in contemplation of death." These provisions are administered as part of the estate or inheritance tax.

Estate Taxes

Prior to repeal of the federal credit for state death taxes, all states imposed pickup estate taxes

In 2001, all 50 states imposed estate taxes to take advantage of the federal estate tax's credit for state death taxes. This credit was essentially a federal revenue-sharing provision for states, allowing a state to impose an estate tax at no cost to its residents. Each dollar of state estate tax (up to the limits of the federal credit) reduced federal tax, dollar for dollar. Federal tax increased by any amount a state's tax was lower than the maximum federal credit. In 2001, 38 states and the District of Columbia only imposed taxes equal to the federal credit. The remaining 12 states imposed estate or inheritance taxes that exceeded the federal credit, although Connecticut and Louisiana had enacted scheduled reductions in their taxes down to the level of the federal credit.

Congress repealed the credit in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and replaced it with a deduction for state death taxes, effective for decedents dying in 2005. Under EGTRRA, the federal estate tax expired for one year (2010 deaths). In three subsequent acts (most recently in the Tax Cuts and Jobs Act of 2017 or TCJA), Congress significantly revamped the federal tax, increasing the exclusion amount, making it portable, and reducing rates. The TCJA increased the federal exclusion to $11.18 million for 2018 deaths (amount is indexed for inflation), but this increase is scheduled to expire in 2026 (reverting back to about one-half of the current amount).[1] Because state taxes are deductible in computing the federal estate tax, the federal changes have state tax implications.

Repeal of the federal credit led to elimination of most state estate taxes; 11 states and the District of Columbia impose estate taxes on 2018 deaths

With EGTRRA's repeal of the federal credit, many states whose taxes were directly linked to the federal credit allowed their taxes to expire, while other states "decoupled" their taxes from the federal tax and allowed them to continue, or reenacted the taxes to preserve the state revenues.[2] In response to state budget problems associated with the Great Recession, three states, Delaware, Illinois, and Hawaii, reenacted estate taxes that had expired. Following the end of the recession, the trend of repealing state taxes has reemerged with four states repealing their taxes: Delaware (2018 deaths), New Jersey (2018 deaths), North Carolina (2013 deaths), and Ohio (2013 deaths).

For decedents dying in 2018, 11 states and the District of Columbia impose estate taxes. The tax base for these taxes (aside from the exemption amounts) generally parallels the federal estate tax or at least relies on definitions under the federal tax. The details of these estate taxes vary with exemptions ranging from $1 million (Massachusetts and Oregon) to $5.6 million (Hawaii and Maine). The District of Columbia's zero bracket amount is linked to the current federal law amount of $11.18 million. The trend has been to increase exemption amounts with multiple states increasing their exemption amounts. Table 2 shows the exemption amounts for decedents dying during 2017 to 2021.

Table 2

State Estate Tax Exemption Amounts Applicable to 2017 - 2021 Deaths (amounts in thousands)

State	2017	2018	2019	2020	2021
Connecticut[3]	$2,000	$2,600	$3,600	$6,100	$6,100
District of Columbia[4]	$2,000	$11,180	Federal	Federal	Federal
Hawaii[5]	$5,490	$5,600	Federal*	Federal*	Federal*
Illinois[6]	$4,000	$4,000	$4,000	$4,000	$4,000
Maine[7]	$5,490	$5,600	Federal*	Federal*	Federal*
Maryland[8]	$3,000	$4,000	$5,000	$5,000	$5,000
Massachusetts[9]	$1,000	$1,000	$1,000	$1,000	$1,000
Minnesota[10]	**$2,100**	**$2,400**	**$2,700**	**$3,000**	**$3,000**
New York[11]	$5,250	$5,250	Federal*	Federal*	Federal*
Oregon[12]	$1,000	$1,000	$1,000	$1,000	$1,000
Rhode Island[13]	$1,515	$1,538	Indexed	Indexed	Indexed
Vermont[14]	$2,750	$2,750	$2,750	$2,750	$2,750
Washington[15]	$2,129	$2,193	Indexed	Indexed	Indexed

*Refers to the pre-TCJA federal estate tax exclusion amount, which is indexed for inflation.

Most state estate taxes have graduated rates with a 16 percent top rate; four states base their rates on the old federal credit

State estate tax rates reflect the legacy of the credit for state death taxes under the federal estate tax. The federal credit provided a top rate of 16 percent. After Congress repealed the credit, states have slowly enacted their own rate schedules and most of the new state rate schedules maintain some resemblance to the federal credit schedule—in particular its top rate of 16 percent. Four states continue to rely on the federal credit calculations to determine state tax. Table 3 shows the top statutory rates for the state estate taxes and whether the rate schedules have been specifically enacted or are based on the federal credit calculations.

Table 3

State Estate Taxes Rates (2018)			
State	**Top Statutory Rate**	**Basis for Rate Schedule**	**Special feature of tax**
Connecticut[16]	12%	State specific	Max tax of $20 million applies*
District of Columbia[17]	15.2%	Specific to D.C.	
Hawaii[18]	15.7%	State specific	Exemption is portable and reduced by taxable gifts
Illinois[19]	16%	Federal credit	
Maine[20]	12%	State specific	
Maryland[21]	16%	Federal credit	No bubble rate; exemption portable (2019 deaths)
Massachusetts[22]	16%	Federal credit	
Minnesota[23]	**16%**	**State specific**	
New York[24]	16%	State specific	Exemption phases-out
Oregon[25]	16%	State specific	
Rhode Island[26]	16%	Federal credit	No bubble rate
Vermont[27]	16%	State specific	
Washington[28]	20%	State specific	
*Reduced to maximum tax of $15 million effective for 2019 deaths.			

Higher "bubble" marginal rates apply under most state taxes that are based on the repealed federal credit. The top rates listed in Table 3 for federal credit states is not the real top rate for some of those state taxes. Although the rate schedule under the old federal credit had a top rate of 16 percent, an important qualifier applies to estates with taxable values modestly above the applicable state exemption amount—higher tax rates apply to a small range of values. This somewhat counterintuitive result follows from the nature of the federal credit computation, which determines the tax liability. The allowable federal credit equaled the lesser of:

1. The federal credit amount (i.e., the amount calculated under federal credit's rate schedule with rates ranging from 0.8 percent to 16 percent) or

2. The amount of the federal estate tax calculated under the federal rate schedule—for most states, under the 2001 version of the federal estate tax.

Factor #2 (the limitation to the amount of federal tax liability) results in higher marginal rates until the computation under factor #1 is larger. Since the pre-2001 federal estate tax rates ranged from 18 percent to 55 percent, higher marginal rates apply to values just over the exemption amount than the 16 percent top rate under the credit schedule. For example, the marginal rate on taxable values between $1 million and about $1.1 million is 41 percent for a state tax with a $1 million exemption. The full amount of the federal tax above the exemption/credit amount qualified for the credit for state death taxes, so as estate values increase, the credit (state tax) rises at the old federal estate tax rate, not 16 percent. This includes the credit amount on the estate value below the exemption amount. As a result, the marginal tax rate for a state with a $1 million exemption is 41 percent on values of an estate just over $1 million until the full state death tax credit amount is reached for that value estate. For estate taxes with $2 million exemptions or $3.5 million exemptions, the marginal rates would be higher or lower (depending upon which version of federal tax computation is used for the limitation—the 2001 or the current 40 percent rate), because the applicable federal estate tax rates for those estates differ.

This peculiar feature of these state taxes takes away the benefit of the exemption amount as estate values increase above the exemption. But tax always continues to rise as the value of the estate increases. Put another way, this "bubble" rate for certain value estates never causes the tax (or the average or effective rate of tax) on a lower valued estate to exceed that on an estate with a higher taxable value.[29]

Marginal rates are important in the design of an income tax, since they affect the incentive to earn (or report) income. It is less clear that marginal rates under estate taxes are important policy features. These high marginal rates apply across a relatively narrow range of taxable values. The tax is a onetime tax and most individuals will not know whether their estates will fall into a narrow range of values on the (unknown) date in the future when they die. Thus, these high marginal rates probably do not affect behavior much, in setting up estate plans, making domicile decisions, or taking similar actions. The average or total rate of tax is probably the more important effect on behavior or planning in the context of estate and inheritance taxes.[30]

States that base their taxes on the old federal credit computations will have these bubble marginal rates over narrow ranges of estate values. (State-defined estate taxes typically do not have this peculiar feature.) Maryland and Rhode Island have limited their taxes so that the marginal rates do not exceed the top 16 percent credit rate.[31]

Special features apply in a few states. Connecticut has a $20 million limit on its estate and gift taxes (dropping to $15 million for 2019 deaths when the exemption amount increases). As noted below, the Connecticut tax is unified with the state gift tax. The exemption under the Hawaii tax is reduced by taxable gifts (as defined by the federal gift tax). The Hawaii and Maryland exemptions are portable, following the federal practice (discussed below). No other state tax has this feature. Although the New York tax has its own rate schedule, it provides that the exemption is taken away for taxable estates that exceed 105 percent of the exemption.[32] This creates a cliff effect of higher (than the nominal 16 percent statutory rate) marginal rates that apply across a narrow range of estate values just above the exemption amount. This is similar to the bubble marginal rates in states with taxes based on the federal credit.

State Inheritance Taxes

Six states impose inheritance taxes on 2018 deaths

In 2001, 11 states imposed inheritance or succession taxes in addition to pickup estate taxes. Since 2001, five states (Connecticut, Indiana, Louisiana, New Hampshire, and Tennessee) have repealed their taxes. The structure of the repealed Tennessee tax made it more like an estate tax, despite its inheritance tax name.

Table 4 lists the states with inheritance taxes, the exemption amounts, and top rates for lineal heirs and collateral heirs for deaths in 2018. Lineal heirs are typically children, grandchildren, and parents, but practices vary as to whether their spouses (e.g., sons-in-law or daughters-in-law) are included. Collateral heirs typically are cousins, aunts, uncles, nephews, nieces, and unrelated individuals. Some states have intermediate classes of beneficiaries—e.g., brothers and sisters—with separate rate schedules. The Nebraska tax is a county tax.

Table 4

State Inheritance Taxes for 2018 Deaths

State	Exemption – lineal heirs	Top rate – lineal heirs	Exemption – collateral heirs	Top rate – collateral heirs
Iowa	unlimited[33]	N.A.	0[34]	15%[35]
Kentucky	unlimited[36]	N.A.	$500[37]	16%[38]
Maryland*	unlimited[39]	N.A.	$1,000[40]	10%[41]
Nebraska	$40,000[42]	1%[43]	$10,000[44]	18%[45]
New Jersey	unlimited[46]	N.A.	$500[47]	16%[48]
Pennsylvania	$3,500[49]	4.5%[50]	0	15%[51]

*Maryland also has an estate tax.

Several observations can be made regarding the characteristics of the inheritance taxes relative to the state estate taxes:

- With the exception of Pennsylvania and the 1 percent county tax in Nebraska, the taxes apply to transfers to more distant relatives (e.g., siblings, cousins, nephews, and nieces) and unrelated heirs. Since transfers to children are the most likely bequests, these taxes probably should not be considered general or broad taxes. They could be viewed as taxes on individuals who do not have children or who leave more substantial amounts to heirs other than their children.

- The Pennsylvania tax is something of an outlier with its broad application (low exemptions and application to bequest to lineal heirs at rates up to 4.5 percent).

- The exemptions for these taxes are typically quite a bit lower than for estate taxes. This should result in many more estates being subject to the taxes—at least for estates that transfer property to other than direct descendants or ancestors.

- The tax rates on bequests to collateral heirs tend to be comparable to the rates under most state estate taxes.

- Maryland has both an inheritance tax and an estate tax. This seeming quirk resulted from the history of Maryland having an inheritance tax and a pickup estate tax to take advantage of the federal credit for state death taxes. When the federal credit was repealed, it chose to maintain its estate tax. (All of the other states with inheritance taxes repealed or allowed their estate taxes to expire. New Jersey repealed its estate tax in 2017.) The taxes are not additive: the estate tax is effectively reduced by the amount of inheritance tax paid.

Gift Taxes

Connecticut is the only state that imposes a true gift tax

Over the last decade, the few states that imposed stand-alone gift taxes have been abandoning them. Stand-alone or true gift taxes apply regardless of when the gift is made. When EGTRRA was enacted in 2001, four states imposed true gift taxes. Louisiana repealed its gift tax in 2007 after it repealed its inheritance tax.[52] North Carolina repealed its gift tax in 2008.[53] In 2012, Tennessee repealed its gift tax.[54] In 2013, Minnesota enacted a gift tax, but then reversed that decision in 2014, repealing the tax retroactively to its original effective date.[55] That leaves Connecticut as the only state with a stand-alone gift tax.

The Connecticut tax is unified with its estate tax with a top rate of 12 percent and an exemption of $2.6 million for 2018 deaths (rising to $6.1 million for 2020 deaths). Since the tax is unified with the estate tax, lifetime gifts use up both the gift tax and estate tax exemptions. The tax only applies to gifts that exceed the annual, per-recipient federal exemption amount ($15,000 for 2018 gifts, indexed for inflation). In addition, a maximum tax limit on the gift and estate taxes of $20 million applies, which will drop to $15 million starting for 2020 gifts.[56]

Taxable gifts reduce Hawaii's estate tax exclusion

Hawaii's estate tax provides that its exclusion amount (defined by reference to the federal exclusion) is reduced by taxable, lifetime gifts (i.e., those over the annual per-recipient exemption under federal law).[57] This imposes a *de facto*, deferred gift tax on gifts up to the federal exclusion amount for individuals whose estates are large enough to trigger estate tax.

Ten states impose their estate or inheritance taxes on gifts made in contemplation of death or shortly before death

Ten states have provisions designed to tax gifts that are made in contemplation of death or within a short period of time before the donor's death. These rules are intended to prevent the use of "deathbed" or similar gifts to avoid paying estate or inheritance tax. (As noted above, Connecticut and Hawaii have rules that obviate the need for these special rules.)

States with taxes that do not make provisions for taxing gifts made shortly before or in contemplation of death are subject to deathbed gift-planning strategies to avoid tax. For these states, a deathbed gift removes the gifted property from the taxable estate and can provide a significant reduction in state tax. The increase in the federal gift tax exemption increases the attractiveness of this strategy, since no federal transfer tax would be incurred for gifts of a donor with total net worth below the federal exclusion (currently $11.18 million for 2018).[58]

For states with an estate tax based on the old federal credit, the calculation is slightly more complicated. Taxable gifts (i.e., those above the federal, per recipient annual exemption amount) are not included in the typical measure of the explicit estate tax base.[59] However, some states take taxable gifts into account in determining whether it is necessary to file an estate tax return with lifetime taxable gifts reducing the exemption amount (federal unified credit). For example, Massachusetts includes lifetime adjusted taxable gifts in its filing requirement.[60] Because of the nature of the calculation of the tax, adjusted tax gifts (gifts made after December 31, 1976, when the federal tax was initially unified with the federal gift tax), in effect, reduce or use up the exemption (unified credit) amount, subjecting more of the remainder of the estate to tax.

Table 5 summarizes the state gift tax and gift-in-contemplation-of-death rules. The top rate of the Connecticut gift tax is 10 percent.

Table 5

State Gift Tax Rule			
State	**Type of tax**	**Gift tax**	**Gifts-in-contemplation-of-death rules**
Connecticut	Estate	Unified with estate tax	N.A.
Iowa	Inheritance	N.A.	Transfers above the federal gift tax exclusion within three years of death, other than bona fide sales, are taxable[61]
Kentucky	Inheritance	N.A.	Transfers of material part of estate made three years before death construed prima facie to be made in contemplation of death[62]
Maine	Estate	N.A.	Gifts above the federal gift tax exclusion made within one year of death are included in the estate[63]
Maryland	Inheritance	N.A.	Gifts made within two years of the date of death are presumed taxable under the inheritance tax[64]
Minnesota	Estate	N.A.	Gifts above the federal gift tax exclusion made after June 30, 2013, and within three years of the date of death are included in the taxable estate[65]

Table 5

State Gift Tax Rule			
State	**Type of tax**	**Gift tax**	**Gifts-in-contemplation-of-death rules**
Nebraska	Inheritance	N.A.	Gifts above the federal gift tax exclusion made within three years of the date of death are subject to inheritance taxation[66]
New Jersey	Inheritance	N.A.	Transfers within three years of death deemed made in contemplation of death, absent proof to the contrary[67]
New York	Estate	N.A.	Gifts above the federal gift tax exclusion amount, made within three years of the date of death, after March 31, 2014, and while the decedent was a resident of New York are included in the taxable estate[68]
Pennsylvania	Inheritance	N.A.	Transfers greater than $3,000 made within one year of date of death are taxable[69]
Vermont	Estate	N.A.	Estate is increased by the amount of gifts taxable under federal gift tax made within 2 years of death[70]

Reconciling Different State and Federal Exemptions

Differing federal and state exemption amounts can make it difficult to simultaneously minimize federal and state tax

The exemption amounts under all state inheritance and estate taxes are lower than that allowed under the federal estate tax. (The District of Columbia estate tax conforms to federal amount.) The differences in the exemption amounts can create difficult choices for married couples and their estate planners. When the federal and state exemptions are the same, a standard planning strategy for married couples is to fund a credit shelter (or family) trust up to the federal and state exemption amount on the death of the first spouse with the remainder of the estate passing to the surviving spouse and qualifying for the marital deduction. When the federal and state exemption amounts are equal, this approach avoids both federal and state tax on the first death and avoids wasting any of the first spouse's exemption, which would have occurred if the whole estate simply passed to the surviving spouse. If the exemption amount increases later (or tax rates are reduced), these changes operate to reduce the taxes on the combined estate of the couple. Thus, the choice was relatively easy.

A lower state exemption than the federal exemption presented a sort of Hobson choice when the first spouse dies. The executor or personal representative could opt to defer both federal and state tax by putting only the amount of the state exemption in the credit shelter trust. But this would waste part of the federal exemption and, thus, potentially subject the estate to a higher federal estate tax when the second spouse dies.[71] On the other hand, the executor could fund the credit shelter trust at the higher federal exemption amount and pay the (lower) state tax to avoid this risk. However, the federal exemption is indexed for inflation and, thus, will increase (and

Congress could increase it further, as it has done several times recently). It is possible those increases would exempt the entire remaining estate (or the federal tax could be repealed). In that circumstance, paying state tax to avoid the possibility of a higher federal tax later would have been unnecessary. Obviously, there is no "right" answer given the uncertainty as to: (1) when the second spouse will die and the value of the estate at that time, and (2) what the federal and state estate taxes will be when that happens.

To provide an "out" from this dilemma, some states allow state-only qualified terminable interest property (QTIP) elections. Federal "portability rules" provide an additional, and, simpler solution to this challenge.

Portability of the federal exemption allows electing the state amount on the death of the first spouse without losing the federal exemption

Funding a credit shelter or family trust in the amount of the federal exemption requires a married couple to divide their ownership of assets so each spouse has sufficient assets to fund the trust, since it will be unclear which spouse will die first. That often required more planning (or willingness to transfer assets) than many couples were willing to or did do. To address this problem, Congress in 2010 temporarily made the exemption of the first spouse to die "portable"; a change that was made permanent in 2012. Portability also provides a potential solution to the planning challenge of differing federal and state exemption amounts. As noted above, Hawaii and Maryland have also adopted portability rules for their estate taxes.

Under portability, the surviving spouse inherits the unused exemption on the death of the first spouse; the unused exemption is not "lost." Portability obviates some of the challenge of avoiding paying state tax on the first death and not losing the federal exemption. On the death of the first spouse, the state exemption amount could be put in the credit shelter trust, relying on portability to preserve the unused federal exemption for the surviving spouse.

But portability may not solve all of the planning problems:

- Remarriage may eliminate some or all of its benefits.
- Some planners prefer to put the federal exemption amount in a credit shelter trust to shield increases in its value during the surviving spouse's life from estate tax

Allowing a state QTIP election that differs from the federal election lets a married couple defer paying state tax without forgoing using the full federal exemption when the first spouse dies

Most states allow differing QTIP elections for state and federal tax purposes. QTIP trusts are a standard estate tax planning tool for married couples. (See the box to the right.) QTIP rules allow electing the amount of the trust that qualifies for the marital deduction. The rest or nonelected part of the trust removes property from the estate of the surviving spouse for estate tax purposes, while providing income to the surviving spouse and limiting to whom the property will ultimately go. By allowing different QTIP amounts for state and federal tax purposes, the full exemption amounts for both taxes can be claimed, while also deferring tax under both taxes until the last spouse dies without using portability.

Table 6 lists the states that allow state QTIP elections that differ from the federal election, broken down by whether the rule is based on an administrative ruling or legislation.

QTIP Rules

QTIP rules allow the trust's value to qualify for the marital deduction (avoiding tax on the death of the first spouse), although the surviving spouse has only a limited income interest. To be QTIP property, the following criteria must be met:

- Decedent must own the property
- The surviving spouse must have a right to all of the income, payable at least annually, from the property for life
- No one else may have a power of appointment over the property until the surviving spouse dies
- A QTIP election must be made

Table 6

States Allowing Separate QTIP Elections

	Authorized by:	
State	**Legislation**	**Administratively**
Illinois	x[72]	
Hawaii		x[73]
Kentucky		x[74]
Maine	x[75]	
Maryland	x[76]	
Massachusetts		x[77]
Minnesota	x[78]	
New York	x[79]	
Oregon	x[80]	
Pennsylvania	x[81]	
Rhode Island		x[82]
Washington	x[83]	

Connecticut, Maine, and New York have rules that allow state QTIPs that differ from the federal election, but only if no federal QTIP election is made.[84]

Exemptions or Deductions for Farm and Small Business Property

States have had longstanding exemptions, exclusions, or deductions for farm and business properties under their estate or inheritance taxes. Some of these were based on the special valuation rules under the Internal Revenue Code for farm and business real property.[85] Within the last decade, several states have enacted exemptions or deductions of these types. These provisions likely respond to concerns that estate and inheritance taxes create liquidity problems for farmers and small business owners who wish to maintain the business or farm in their families, but whose estates do not have sufficient liquid assets to pay the tax without borrowing.

The provisions often require the decedent to have owned and used the property in operating a farm or business for a specified period of time (e.g., three or five years) immediately before the decedent’s death. These restrictions are likely intended to prevent the use of passive investments in farm or business property, particularly investments made shortly before death, as a tax avoidance mechanism and to restrict the benefits to family-operated businesses.[86] In addition, the recipient heirs are typically required to continue to own and use the assets as a farm or business for a period of time after decedent’s death (typically three to seven years).

The following are short descriptions of some of the recently enacted provisions:

- **Maryland agricultural property.** A 2012 law exempts up to $5 million in “qualified agricultural property” from Maryland estate tax.[87] In addition, qualified agricultural value in excess of $5 million is taxed at a 5 percent rate with the remainder of the estate (in excess of the regular exemption) taxed at the 16 percent top rate. Qualified agricultural property is real or personal property used primarily for farming purposes.[88] To qualify, the property must pass to a recipient who agrees to use the property for farming purposes after the decedent’s death. (No relationship requirement applies to the recipient; however, the exemption does not apply to the Maryland inheritance tax, which will apply to property left to other than lineal heirs.) Failure to use the property in this way for at least ten years results in recapture of the tax reduction.

- **Minnesota qualified farm and small business property.** The Minnesota estate tax provides a deduction from the adjusted taxable estate for qualified farmland and small business property.[89] The maximum deduction is set at $5 million less the amount of the general exemption amount (or $2.6 million for 2018 deaths: $5 million deduction - $2.4 million general exemption = $2.6 million).[90] To qualify, farmland must have been the homestead agricultural property of the decedent for three years before his or her death. For small business property, the gross sales of the business must not have exceeded $10 million in the tax year that ended before the decedent’s death and the decedent or spouse must have materially participated in the business under the federal passive activity loss rules. The decedent also must have owned the property for the three-year period ending on the date of death. Cash and marketable securities do not qualify for the deduction. The property must be passed to qualified family members who are required to use the property (or for farmland to own it and maintain the property’s tax classification as agricultural land) for three years after the decedent's death.[91] Failure to satisfy these requirements subjects the property to a 16-percent recapture tax.

- **Pennsylvania agricultural and business properties.** Under 2012 legislation, Pennsylvania exempted real estate devoted to the business of agriculture, agricultural commodities, and forestry reserves from inheritance taxation.[92] To qualify, the property must be transferred to lineal heirs or siblings. The heirs must use the exempted real estate (but not forestry reserves or agricultural property in conservation programs) for a seven-year period in agricultural production and generate a minimum of $2,000 per year in income. The 2013 Pennsylvania Legislature added an exemption for small business property.[93] The exemption is limited to businesses with net book value of less than $5 million and fewer than 50 full-time equivalent employees. The business must be exclusively family owned (by spouses, ancestors, lineal heirs, or siblings), must not be principally managing investments or income-producing property, and must have been in existence for five years before the decedent's death. The qualifying heirs must continue to own the business for seven years. Both exemptions are subject to recapture taxes, including payment of interest. Under a separate provision, Pennsylvania also provides for use valuation of certain farmland and exclusion of one-half of the value of land subject to an agricultural conservation easement.[94]

- **Oregon natural resource property.** A 2007 law (modified in 2008 and 2011) allows a credit against the Oregon estate tax for farm, forestry, and fishing business property.[95] To qualify, the decedent must have used the property for five out of eight years before his or her death in conducting the business and a qualifying family member must continue to use the property (or qualifying replacement property) for five out of eight years after the decedent's death. The credit only applies if the total estate does not exceed $15 million and if the natural resource property constitutes at least half of the value of the adjusted gross estate. The law specifies a list of qualifying property, including specific types of business equipment and other property. Up to 15 percent of the property can be an "operating allowance" (working capital or cash), not just tangible property. The credit equals the proportion of the tax paid on the value of natural resource property up to a $7.5 million maximum. A recapture tax applies if the property is disposed before meeting the five-year (out of eight) use requirement.

- **Washington qualified family-owned business interests.** 2013 legislation provided a $2.5 million deduction for qualified family-owned business interests from the Washington estate tax (in addition to the general exemption).[96] A qualified business is defined by reference to federal law.[97] In addition, the value of the business may not exceed $6 million and must comprise at least one-half of the Washington taxable estate. The decedent must have owned and materially participated in the business for five out of the eight years before his or her death, and the qualified heir must own and operate the business for three years after the decedent's death.[98] A recapture tax, plus interest, applies if this three-year period is not met. In addition, Washington has a deduction for farm property that a decedent leaves to a qualifying family member.[99] At least one-half of the gross estate must consist of the farm property, which the decedent or family used (materially participated under federal rules) for five out of the eight years. Neither a dollar cap nor an ongoing use restriction appears to apply under the deduction.

Revenues Yielded by the Taxes

Table 7 shows the annual revenues yielded by the state taxes[100] and the Minnesota estate tax for 2000 to 2017. Revenues over the last few years have been quite stable, averaging about $4.8 billion per year. Total state revenues from the taxes declined by about 42 percent over this period (from $8 billion in 2000 to $4.8 billion in 2017), as many states allowed their taxes to expire or reduced or repealed them. The change in revenues net of the federal credit is more dramatic, but in the opposite direction. Revenues from the New Jersey, New York, and Pennsylvania taxes make up over half of the revenues. When the data reflect repeal of New Jersey estate tax and the exemption increases, national revenues are likely to decline modestly.

Minnesota's revenues fluctuate significantly from year to year (2017 was a low year), but grew over the period, reflecting the stability of its tax parameters and the growth in asset values. Increases in the Minnesota exemption, enacted in 2014 and 2017, will reduce revenues significantly but are only partially reflected in the data.[101]

Table 7

State Estate, Inheritance, and Gift Tax Revenues
Fiscal Years 2000 – 2017
(amounts in thousands)

Year	Total state revenues	% change	Federal credit for state death taxes	Revenues net of federal credit	Minnesota revenues	% change
2000	$7,998,210		$6,500,641	$1,497,569	$82,516	
2001	7,499,439	-6.2%	6,318,812	1,180,627	53,377	-35.3%
2002	7,384,434	-1.5%	5,751,539	1,632,895	66,291	24.2%
2003	6,685,304	-9.5%	4,745,610	1,939,694	127,687	92.6%
2004	5,731,709	-14.3%	3,178,663	2,553,046	87,022	-31.8%
2005	5,339,548	-6.8%	1,861,784	3,477,764	68,952	-20.8%
2006	4,960,948	-7.1%	261,535	4,699,413	212,881	208.7%
2007	4,923,712	-0.8%	Not reported	4,923,712	107,599	-49.5%
2008	5,100,680	3.6%	Not reported	5,100,680	115,523	7.4%
2009	4,669,184	-8.5%	Not reported	4,669,184	129,811	12.4%
2010	3,891,364	-16.7%	Not reported	3,891,364	148,422	14.3%
2011	4,488,803	15.4%	Not reported	4,488,803	161,309	8.7%
2012	4,485,466	-0.1%	Not reported	4,485,466	165,983	2.9%
2013	4,882,927	8.9%	Not reported	4,882,927	159,115	-4.1%
2014	4,747,791	-2.8%	Not reported	4,747,791	165,159	3.8%
2015	4,764,912	0.4%	Not reported	4,764,912	141,262	-14.5%
2016	5,133,305	7.7%	Not reported	5,133,305	182,499	29.2%
2017	4,754,312	-7.4%	Not reported	4,754,312	129,657	-29.0%

Sources: State revenues from U.S. Census Bureau, http://www.census.gov/govs/statetax/
Federal credit amounts from Internal Revenue Service, Statistics of Income Division, http://www.irs.gov/taxstats/indtaxstats/article/0,,id=210646,00.html

For more information about estate taxes, visit the miscellaneous taxes area of our website, www.house.mn/hrd/.

Endnotes

[1] Pub. L. No. 115-96, § 11061.

[2] Some state taxes were automatically linked to changes in federal law. For those states, repeal of the federal credit reduced the state tax, unless the state legislature acted to "decouple" from the federal law. Thus, legislative inaction caused the tax to expire. Other states linked their taxes to the federal tax as it existed on a specific date or as it applied to decedents dying up to a specific date. For those states, elimination of the tax required positive legislative action. Most states fell into the former category, while a few states (including Minnesota) were in the latter. Some states, like Minnesota, are prohibited constitutionally from delegating to Congress the ability to modify their tax laws, so they cannot automatically adopt most future changes in federal law. See, e.g., *Wallace v. Comm'r of Taxation*, 184 N.W.2d 588 (Minn. 1971).

[3] Conn. Gen. Stat. § 12-391(g), as amended by 2017 Conn. S.B. 1502, https://www.cga.ct.gov/2017/ACT/pa/2017PA-00002-R00SB-01502SS1-PA.htm (accessed May 31, 2018).

[4] D.C. Code Ann. §§ 47-3701(14)(c) (setting zero bracket amount at basic exclusion amount under federal estate tax, including inflation adjustments); 47-3702(a-1)(1) (exempting zero bracket amount from tax).

[5] Haw. Rev. Stat. § 236E-6, https://www.capitol.hawaii.gov/hrscurrent/Vol04_Ch0201-0257/HRS0236E/HRS_0236E-0006.htm (accessed May 31, 2018). The Hawaii exclusion or exemption amount is reduced by the amount of taxable lifetime gifts, as determined under the federal gift tax. Hawaii law is linked to the Internal Revenue Code, as amended through December 31, 2017, but the 2018 legislation limited the estate exclusion amount to the pre-TCJA amount. Hawaii S.B. No. 2821 §§ 2 and 8, amending Haw. Rev. Stat. §§ 235-2.3 and 236E-6, https://www.capitol.hawaii.gov/session2018/bills/SB2821_CD1_.pdf (accessed June 18, 2018); signed into law by the governor on June 7, 2018, Gov. Msg. 1127, https://www.capitol.hawaii.gov/session2018/bills/GM1127_.PDF (accessed June 18, 2018).

[6] 35 Ill. Comp. Stat. § 405/2(b) (2017), http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=609&ChapterID=8 (accessed May 31, 2018).

[7] Me. Rev. Stat. tit. 36, § 4102, http://www.mainelegislature.org/legis/statutes/36/title36sec4102.html (accessed May 31, 2018). Maine's definition of the Internal Revenue Code is tied to the code as amended through December 31, 2016. Me. Rev. Stat. tit. 36, § 111, http://www.mainelegislature.org/legis/statutes/36/title36sec111.html (accessed May 31, 2018).

[8] Md. Code Ann., Tax-Gen. § 7.309 (b)(3)(iii), http://mgaleg.maryland.gov/2018RS/Statute_Web/gtg/7-309.pdf (accessed May 31, 2018) (2018 deaths); 2018 legislation permanently set the exempt amount at $5 million (rather than the federal exclusion amount as provided under prior law, *see id*) plus any deceased spouse unused exclusion amount, effective for decedents dying on or after January 1, 2019. House Bill 308, chapter 21, http://mgaleg.maryland.gov/2018RS/Chapters_noln/CH_21_hb0308t.pdf (accessed May 31, 2018). As a result, the Maryland exemption is portable, similar to the federal exclusion.

[9] Mass. Gen. Laws ch. 65c § 2A, https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIX/Chapter65C/Section2A (accessed May 31, 2018) (exemption amount is determined by reference to the exclusion amount under the now-repealed federal credit for state death taxes).

[10] Minn. Stat. § 291.016, https://www.revisor.mn.gov/statutes/?id=291.016 (accessed May 31, 2018).

[11] N.Y. Tax Law §§ 951–961 (2014). The increases in the exemption amounts as shown in the table take effect for deaths during the 12 months after March 31 of the calendar year. Linkage to the pre-TCJA federal exclusion takes effect for January 1, 2019. The exemption is taken away if the value of the New York taxable estate exceeds 105 percent of the exemption amount, effectively creating a "cliff effect." N.Y. Tax Law § 952(c)(1). The New York tax is tied to federal law as of January 1, 2014. N.Y. Tax Law § 951 (2014).

[12] Or. Rev. Stat. § 118.010(4) (Oregon exemption amount is a zero bracket amount in the tax rate tables), https://www.oregonlegislature.gov/bills_laws/ors/ors118.html (accessed May 31, 2018).

[13] R.I. Gen. Laws § 44-22-1.1, http://webserver.rilin.state.ri.us/Statutes/title44/44-22/44-22-1.1.HTM (accessed May 31, 2018). Indexed dollar amounts are from Rhode Island Dep't of Revenue Div. of Taxation, *Rhode Island estate tax credit and threshold set for 2018* (November 15, 2017), http://www.tax.ri.gov/Advisory/ADV%202017-35.pdf (accessed May 31, 2018).

[14] Vt. Stat. tit. 32, § 7442a, http://legislature.vermont.gov/statutes/section/32/190/07442a (accessed May 31, 2018). Vermont exemption is a zero bracket amount in rate table (with a flat 16 percent rate).

[15] Wash. Rev. Code § 83.100.020(a)(4), http://apps.leg.wa.gov/rcw/default.aspx?cite=83.100.020 (accessed May 31, 2018). The dollar amounts are from Dept. of Rev. website, http://dor.wa.gov/content/findtaxesandrates/othertaxes/tax_estatetaxtables.aspx (accessed May 31, 2018). The indexing of the Washington exclusion amount is based on the year-over-year change in the consumer price index for October for the Seattle-Tacoma-Bremerton metropolitan area, so the indexing factor will not be the same as the indexing of the federal exclusion amount. *Ibid*.

[16] Conn. Gen. Stat. § 12-391(d)(1)(E) (maximum tax) and (g) (rate schedule), as amended by 2017 Conn. S.B. 1502, https://www.cga.ct.gov/2017/ACT/pa/2017PA-00002-R00SB-01502SS1-PA.htm (accessed May 31, 2018).

[17] D.C. Code Ann. § 47-3702.

[18] For exclusion amount see note 5; § 236E-8 (rate schedule), https://www.capitol.hawaii.gov/hrscurrent/Vol04_Ch0201-0257/HRS0236E/HRS_0236E-0008.htm (accessed May 31, 2018).

[19] 35 Ill. Comp. Stat. § 405/2 (2017), http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=609&ChapterID=8 (accessed May 31, 2017).

[20] Me. Rev. Stat. tit. 36, § 4103, http://www.mainelegislature.org/legis/statutes/36/title36sec4103.html (accessed May 31, 2018).

[21] Md. Code Ann., Tax-Gen. § 7.309, http://mgaleg.maryland.gov/2018RS/Statute_Web/gtg/7-309.pdf (accessed May 31, 2018). Portability of the exemption was provided in 2018 legislation. See note 8.

[22] Mass. Gen. Laws ch. 65c § 2A, https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIX/Chapter65C/Section2A (accessed May 31, 2018).

[23] Minn. Stat. § 291.03, https://www.revisor.mn.gov/statutes/?id=291.03 (accessed May 31, 2018).

[24] N.Y. Tax Law §§ 951–961 (2014). N.Y. Tax Law § 952(c)(1) contains the phase-out of the exemption amount.

[25] Or. Rev. Stat. ch. 118, https://www.oregonlegislature.gov/bills_laws/ors/ors118.html (accessed May 31, 2018).

[26] R.I. Gen. Laws § 44-22-1.1, http://www.rilin.state.ri.us/Statutes/TITLE44/44-22/44-22-1.1.HTM (accessed May 31, 2018).

[27] Vt. Stat. tit. 32, § 7442a, http://legislature.vermont.gov/statutes/section/32/190/07442a (accessed May 31, 2018).

[28] Wash. Rev. Code ch. 83.100, http://apps.leg.wa.gov/rcw/default.aspx?cite=83.100.040 (accessed May 31, 2018).

[29] As a result, despite the peculiar shape of the curve resulting from plotting the marginal rates (rising and then falling), this computational method does not undercut the progressivity of an estate tax. The tax burden and average tax rates consistently rise under these taxes as estate values rise. Similar rising and falling effective marginal rates apply under the federal and some state income taxes as a result of the phaseout of exemptions, deductions, and credits that cause tax to rise over narrow ranges of income more rapidly than the statutory rate as income increases. For a discussion of these effects, see, for example, Daniel N. Shaviro, "Effective Marginal Tax Rates on Low-Income Households," *Tax Notes* 84 (1999): 1191.

[30] The bubble rates could, however, encourage the personal representatives for an estate with a value in the narrow range to incur higher deductible costs of administration, because these expenses would have a lower

effective price as a result of the high estate tax rates. Similarly, they could encourage deathbed gifts as discussed on page 10.

[31] Md. Code, Tax-Gen, § 7-309(b)(3)(iii), http://mgaleg.maryland.gov/2018RS/Statute_Web/gtg/7-309.pdf (accessed June 1, 2018). Rhode Island does so by providing a state credit equal to $64,400 (the equivalent of the tax on a $1.5 million estate), http://www.rilin.state.ri.us/Statutes/TITLE44/44-22/44-22-1.1.HTM (accessed June 1, 2018). Indexing has increased the credit amount to $66,810 for 2018 deaths. Rhode Island Dep't of Revenue Div. of Taxation, *Rhode Island estate tax credit and threshold set for 2018* (November 15, 2017), http://www.tax.ri.gov/Advisory/ADV%202017-35.pdf (accessed May 31, 2018).

[32] See note 11.

[33] Iowa Code § 450.9, https://www.legis.iowa.gov/docs/code/2017/450.9.pdf (accessed June 1, 2018).

[34] Iowa Dept. of Revenue, Introduction to Iowa Inheritance Tax, https://tax.iowa.gov/inheritance (accessed June 1, 2018). Effective July 1, 2016, the exemption for lineal heirs was extended to lineal heirs of stepchildren. No tax applies, if the total estate has a value of less than $25,000. Iowa Code § 450.4(1), https://www.legis.iowa.gov/docs/code/2017/450.4.pdf (accessed June 1, 2018). In addition, receipt of interests in an employer-sponsored retirement plan or an individual retirement plan are exempt to the extent they are paid as annuities and are subject to federal income tax. *Ibid.* This exemption does not depend upon the identity of the beneficiary of the retirement plan.

[35] Iowa Code § 450.10, https://www.legis.iowa.gov/docs/code/2017/450.10.pdf (accessed June 1, 2018). The top rate on bequests to a brother, sister, son-in-law, or daughter-in-law is 10 percent.

[36] The exemption extends to class A beneficiaries, which include brothers and sisters. Ky. Rev. Stat. §§ 140.070; 140.080, http://www.lrc.ky.gov/statutes/statute.aspx?id=28983; and http://www.lrc.ky.gov/statutes/statute.aspx?id=28984 (accessed June 1, 2018).

[37] The exemption for nieces and nephews is $1,000. Ky. Rev. Stat. § 140.080(1)(e), http://www.lrc.ky.gov/statutes/statute.aspx?id=28984 (accessed June 1, 2018).

[38] Ky. Rev. Stat. § 140.070(3), http://www.lrc.ky.gov/statutes/statute.aspx?id=28983 (accessed June 1, 2018).

[39] The exemption extends to brothers and sisters and spouses of descendants. Md. Code, Tax-Gen. § 7-203(b)(2), http://mgaleg.maryland.gov/2018RS/Statute_Web/gtg/7-203.pdf (accessed June 4, 2018).

[40] Md. Code, Tax-Gen, § 7-203(g), http://mgaleg.maryland.gov/2018RS/Statute_Web/gtg/7-203.pdf (accessed June 4, 2018). In addition, to the $1,000 exemption per recipient, the tax does not apply to an estate with a value of less than $50,000. Md. Code, Tax-Gen. § 7-203(h); Md. Code, Estate & Trusts, § 5-601(a), http://mgaleg.maryland.gov/2018RS/Statute_Web/get/5-601.pdf (accessed June 4, 2018).

[41] Md. Code, Tax-Gen., § 7-204(b), http://mgaleg.maryland.gov/2018RS/Statute_Web/gtg/7-204.pdf (accessed June 4, 2018).

[42] Neb. Rev. Stat. Ann. § 77-2004, http://nebraskalegislature.gov/laws/statutes.php?statute=77-2004 (accessed June 4, 2018).

[43] *Ibid.* These reduced rates and the $40,000 exemption amount also apply to brothers and sisters.

[44] Neb. Rev. Stat. Ann. § 77-2006, http://nebraskalegislature.gov/laws/statutes.php?statute=77-2006 (accessed June 4, 2018); uncles, aunts, nephews, and nieces qualify for a $15,000 exemption and 13 percent tax rate. Neb. Rev. Stat. Ann. § 77-2005, http://uniweb.legislature.ne.gov/laws/statutes.php?statute=77-2005 (accessed June 4, 2018). Relatives of former spouses of the decedent (if they were married to the decedent when they died) also qualify for this exemption. Rev. Stat. Ann. § 77-2005.01, https://nebraskalegislature.gov/laws/statutes.php?statute=77-2005.01 (accessed June 4, 2018).

[45] Neb. Rev. Stat. Ann. § 77-2006, http://nebraskalegislature.gov/laws/statutes.php?statute=77-2006 (accessed November 5, 2015); uncles, aunts, nephews, and nieces are subject to a 13 percent tax rate. Neb. Rev. Stat. Ann. § 77-2005, http://uniweb.legislature.ne.gov/laws/statutes.php?statute=77-2005 (accessed June 4, 2018). Relatives of former spouses (if they were married to the decedent when they died) also qualify for this exemption. Rev. Stat. Ann. § 77-2005.01, https://nebraskalegislature.gov/laws/statutes.php?statute=77-2005.01 (accessed June 4, 2018).

[46] N.J. Stat. § 54:34-2a.

[47] N.J. Stat. § 54:34-1. The exemption is $25,000 for transfers to siblings or children of siblings (i.e., nieces and nephews). A variety of categorical exemptions apply, such as for life insurance, qualified plans, and so forth. N.J. Stat. § 54-34-4.

[48] N.J. Stat. § 54:34-2d.

[49] This is the family exemption amount, which may not apply in all circumstances (e.g., if the recipient is not a member of the decedent's household). 20 Pa. Cons. Stat. § 3121; 72 Pa. Stat. Ann. § 9127(3).

[50] 72 Pa. Stat. § 9116(a)(1). Transfers to or for the benefit if minor children are exempt. 72 Pa. Stat. § 9116(a)(1.2).

[51] 72 Pa. Stat. § 9116(a)(2). Transfers to siblings are taxed at a rate of 12 percent. Pa. Stat. § 2116(a)(1.3).

[52] 2007 La. Act 371, http://www.legis.state.la.us/billdata/streamdocument.asp?did=451028 (accessed July 9, 2010).

[53] 2007 N.C. Sess. Laws 2008-107 § 28.18.(a), http://www.ncga.state.nc.us/Sessions/2007/Bills/House/PDF/H2436v9.pdf (accessed July 9, 2010).

[54] Tenn. Pub. Act ch. 1057, http://www.tn.gov/sos/acts/107/pub/pc1057.pdf (accessed August 2, 2012).

[55] 2013 Minn. Laws ch. 143, art. 7, §§ 11 – 16; repealed by 2014 Minn. Laws ch. 150, art. 3 § 8(a), https://www.revisor.mn.gov/laws/?year=2014&type=0&doctype=Chapter&id=150&format=pdf (accessed August 6, 2014).

[56] Conn. Gen. Stat. § 12-642(c)(2), as amended by 2017 Conn. S.B. 1502, https://www.cga.ct.gov/2017/ACT/pa/2017PA-00002-R00SB-01502SS1-PA.htm (accessed May 31, 2018).

[57] Haw. Rev. Stat. § 236E-6, http://www.capitol.hawaii.gov/hrscurrent/Vol04_Ch0201-0257/HRS0236E/HRS_0236E-0006.htm (accessed June 4, 2018).

[58] Capital gain taxes (federal and state) limit the ability to use gifting strategies to avoid state estate or inheritance taxes. Lifetime gifts are subject to carryover basis rules, while basis is stepped up (increased or decreased) to fair market value for transfers made on death. Thus, if low basis property is given (rather than bequeathed), the recipient heirs may owe federal and state capital gain taxes that exceed the state transfer tax liability when they sell or exchange the gifted property.

[59] The typical tax base is federal adjusted taxable estate, as defined under section 2011(b)(3) of the 2001 Internal Revenue Code. The adjusted taxable estate does not include the value of property given away while the decedent was alive, except the limited provisions under section 2035 (mainly federal gift tax paid on gifts made within three years of the date of death).

[60] *See* Massachusetts Dept. of Revenue, *Overview of Estate Taxes,* https://www.mass.gov/service-details/estate-tax-overview (accessed June 4, 2018) (filing requirement includes value of adjusted taxable gifts).

[61] Iowa Code § 450.3(2), https://www.legis.iowa.gov/docs/code/2017/450.3.pdf (accessed June 5, 2018).

[62] Ky. Rev. Stat. § 140.020(2), http://www.lrc.ky.gov/statutes/statute.aspx?id=28974 (accessed June 5, 2018). For transfers made more than three years before death, it is a question of fact whether a gift was made in contemplation of death.

[63] Me. Rev. Stat. tit. 36 § 4102(7)(C), http://www.mainelegislature.org/legis/statutes/36/title36sec4102.html (accessed June 5, 2018).

[64] Md. Code, Tax-Gen § 7-201(d)(1)(iii), http://mgaleg.maryland.gov/2016RS/Statute_Web/gtg/7-201.pdf (accessed June 5, 2018). This is a presumption; the tax does not apply if the transfer is shown to not have been made in contemplation of death. In addition, other transfers (more than two years before death) shown to be in contemplation of death are taxable. These provision apply under the Maryland inheritance tax; no comparable provisions including inter vivos transfers appear to apply under the Maryland estate tax.

[65] Minn. Stat. § 291.016, subd.2, https://www.revisor.mn.gov/statutes/?id=291.016 (accessed June 5, 2018).

[66] Neb. Rev. Stat. § 77-2002(2), http://nebraskalegislature.gov/laws/statutes.php?statute=77-2002 (accessed June 5, 2018).

[67] N.J. Rev. Stat. § 54:34-1.c.

[68] N.Y. Tax Law §§ 954(3). This provision does not apply to estates of decedents dying on or after January 1, 2019.

[69] 72 Pa. Stat. § 9107(c)(3).

[70] Vt. Stat. tit. 32 § 7402(14)(C), https://legislature.vermont.gov/statutes/section/32/190/07402 (accessed June 5, 2018).

[71] This could also result in higher state tax. In some circumstances, the tax on the first estate would be at a lower rate than the value that is added to the second estate by deferral. This potential rate differential may be offset by the time value of the money, depending upon when the second death occurs.

[72] Ill. Comp. Stat. § 405/2(b-1), http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=609&ChapterID=8 (accessed June 5, 2018).

[73] Dept. of Taxation, *Tax Information Release No. 2010-09* (Oct. 6, 2010), http://files.hawaii.gov/tax/legal/tir/tir10-09.pdf (accessed June 5, 2018).

[74] Robert M. Arlen and David Pratt, "The New York (and Other States) Death Tax Trap," *The Florida Bar Journal* (October 2003): fn. 25, reports that Kentucky allows this practice. An email response from an official at the Kentucky Department of Revenue confirmed that Kentucky does this, but has no formal statute or ruling on the issue.

[75] Me. Rev. Stat. Ann. tit. 36 § 4102(6), http://www.mainelegislature.org/legis/statutes/36/title36sec4102.html (accessed June 5, 2018). A state election may be made only if a federal QTIP election was not made. The maximum amount is the difference between the federal estate tax exclusion (unified credit) amount (but excluding any deceased spouse unused exclusion amount) and the Maine exemption.

[76] Md. Code, Gen-Tax § 7-309(b)(5), http://mgaleg.maryland.gov/2018RS/Statute_Web/gtg/7-309.pdf (accessed June 5, 2018).

[77] Mass. Dept. of Revenue, "Estate Tax Issues Arising from Decoupling the Massachusetts Estate Tax from the Federal Estate Tax," DOR Directive 03-2 (February 19, 2003), https://www.mass.gov/directive/directive-03-2-issues-arising-from-decoupling-the-massachusetts-estate-tax (accessed June 5, 2018).

[78] Minn. Stat. § 291.03, subd. 1d, https://www.revisor.mn.gov/statutes/?id=291.03 (accessed June 5, 2018).

[79] N.Y. Tax Law §§ 955(c).

[80] Or. Rev. Stat. § 118.016 (special property election); https://www.oregonlegislature.gov/bills_laws/ors/ors118.html (accessed June 5, 2018).

[81] 72 Pa. Stat. § 9113.

[82] R.I. Div. of Taxation Declaratory Rulings, Ruling Request No. 2003-03 (April 16, 2003), http://www.tax.state.ri.us/declaratoryrulings/r2003-03.php (accessed June 5, 2018).

[83] Wash. Rev. Code § 83.100.047, http://apps.leg.wa.gov/rcw/default.aspx?cite=83.100.047 (accessed June 5, 2018). A 2012 decision of the Washington Supreme Court held that amounts transferred into federal QTIP trusts prior to the effective date of the Washington estate tax were not subject to tax as part of the surviving spouse's estate. *Bracken v. State*, 290 P.3d 99 (Wash. 2012). 2013 legislation reversed this result retroactively, except for litigants who obtained final judgments prior to the effective date of the act. 2013 Wash. 2nd Spec. Sess. ch. 2, §§ 5, 9, 10, http://www.leg.wa.gov/CodeReviser/documents/sessionlaw/2013pam3.pdf (accessed November 5, 2013). The Washington Supreme Court upheld this retroactive imposition of tax. *Estate of Hambleton v. Dep't. of Revenue*, 335 P.3d 398 (Wash. 2014), *cert. denied* 136 S.Ct. 318 (2015).

[84] Conn. Dept. of Revenue Services, *2005 Legislation Repealing the Succession Tax and Amending the Connecticut Gift Tax and the Connecticut Estate Tax*, SN 2005 (10), pp. 3-4 (October 7, 2005), http://www.ct.gov/drs/lib/drs/publications/pubssn/2005/sn05-10.pdf (accessed June 5, 2018). For New York see note 79 and for Maine, see note 75.

[85] I.R.C. § 2032A. *See, e.g.*, Md. Code Ann. § 7-218 (installment payment of Maryland inheritance tax for small business), http://mgaleg.maryland.gov/2018RS/Statute_Web/gtg/7-218.pdf (accessed June 5, 2018); Vt. Stat.

Ann. tit. 32, § 7443 (2012) (valuation discount for farms qualifying for federal installment payments), http://legislature.vermont.gov/statutes/section/32/190/07443 (accessed June 5, 2018).

[86] It's unclear to what extent purchases of business assets (in contemplation of death) would be a cost-effective avoidance technique, given the typically high transaction costs of acquiring farms or business assets, particularly if the investor considers them to be a suboptimal use of his or her funds, and the relatively modest tax rates (typically lower than 16 percent before taking into account the effects of any deduction against the federal tax). In any case, state legislatures apparently consider them useful to add as restrictions, if only to reduce the revenue losses from the provisions.

[87] Md. Code, Tax-Gen. §7-309(c), http://mgaleg.maryland.gov/2018RS/Statute_Web/gtg/7-309.pdf (accessed June 5, 2018).

[88] This is defined by reference to section 2032A(e)(5) of the Internal Revenue Code. Md. Code, Tax-Gen. § 7-309(c)(1)(ii), http://mgaleg.maryland.gov/2018RS/Statute_Web/gtg/7-309.pdf (accessed June 5, 2018).

[89] Minn. Stat. §§ 291.005, subd. 1; 291.03, subd. 8-11, https://www.revisor.mn.gov/statutes/?id=291.03 (accessed June 5, 2018). For a more detailed description of the deduction see Minn. Dept. of Rev., *Qualified Small Business Property and Qualified Farm Property*, http://www.revenue.state.mn.us/businesses/estate/Pages/Qualified_small_business_property_and_qualified_farm_property.aspx (accessed June 5, 2018).

[90] Minn. Stat. § 291.016, subd. 3, https://www.revisor.mn.gov/statutes/?id=291.016 (accessed June 5, 2018).

[91] Qualifying family members are defined by reference to section 2032A(e)(2) of the Internal Revenue Code. Minn. Stat. § 291.03, subd. 8, https://www.revisor.mn.gov/statutes/?id=291.03 (accessed June 5, 2018). Note that the heirs need not continue farming the land themselves; they can rent the land out to others (no relationship test applies) and qualify for agricultural property tax classification. Recapture tax applies if they sell to a nonfamily member or convert the land to other uses (e.g., commercial or residential). Minn. Stat. § 291.03, subd. 11. Given this, the provision functions more like a concession to the heirs of decedents who owned homestead farms and who are willing to hold the land for three years after the decedent's death.

[92] Act of July 2, 2012, P.L. 751, No. 85, §§ 21.1-23, http://www.legis.state.pa.us/WU01/LI/LI/US/HTM/2012/0/0085..HTM (accessed June 6, 2018); for a description *see* Pennsylvania Dept. of Rev., *Informational Notice Inheritance Tax 2012-01* (September 6, 2012), http://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/InformationalNotices/Documents/info_notice_inh_2012-01.pdf.

[93] Act of July 8, 2013, P.L. 270, No. 52 § 34, http://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2013&sessInd=0&act=52 (accessed June 6, 2018); for a description of the farmland and *see* Pennsylvania Dept. of Rev., *Informational Notice Inheritance Tax 2014-01* (November 20, 2014), http://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/InformationalNotices/Documents/info_notice_inh_2014-01.pdf. 72 Pa. Stat. § 9111 (includes 2016 amendment).

[94] 72 Pa. Stat. § 9222.

[95] Or. Rev. Stat. § 118.140, https://www.oregonlegislature.gov/bills_laws/ors/ors118.html (accessed June 6, 2018). A 2015 legislative change clarified that the credit was limited to property located in Oregon. Or. Laws 2015, ch. 301 § 1, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2015orLaw0301.pdf (accessed November 24, 2015). A 2017 law directed preparation of a legislative study of the effect of financial incentives on land transfer with a report required to be made to the 2018 legislature. *Ibid*.

[96] Wash. Rev. Code § 83.100.048, http://apps.leg.wa.gov/rcw/default.aspx?cite=83.100.048 (accessed June 6, 2018).

[97] I.R.C. § 2057 (e), which effectively restricts it to heavily family-owned businesses.

[98] The qualified heir's death can shorten this period. The qualified heir's loss of citizenship or moving the business out of the United States are also disqualifying events. Wash. Rev. Code § 83.100.048(3)(a). Material participation is defined by reference to section 2032A(e)(6) of the Internal Revenue Code, which relies on the standard under the Social Security tax on self-employment income.

[99] Wash. Rev. Code § 83.100.046, http://apps.leg.wa.gov/rcw/default.aspx?cite=83.100.046 (accessed June 6, 2018).

[100] The amounts are limited to state taxes and do not reflect local taxes, such as the Nebraska inheritance tax, which is collected by counties and the revenue retained locally.

[101] The revenue effects of Minnesota's increased exemption will first show up in fiscal year 2015 collections.