

INFORMATION BRIEF

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Survey of State Estate, Inheritance, and Gift Taxes

This information brief provides basic background information on the details of state estate, inheritance, and gift taxes for decedents dying in 2015. The District of Columbia and 19 states, including Minnesota, impose these taxes. Of these, 12 states, including Minnesota, and the District of Columbia impose estate taxes, five states impose inheritance taxes, and two states impose both estate and inheritance taxes. One state, Connecticut, imposes a gift tax.

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Executive Summary

Estate, inheritance, and gift taxes are imposed on transfers of property. They differ in the types of transfers to which they apply. 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 some 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State estate, inheritance, and gift taxes have undergone significant changes since Congress repealed the federal credit for state death taxes in 2001.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 2015, 31 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 – 12 States and D.C.	
Connecticut	Minnesota
Delaware	New York
District of Columbia	Oregon
Hawaii	Rhode Island
Illinois	Vermont
Maine	Washington
Massachusetts	
States with Inheritance Taxes – 5 States	
Iowa	Pennsylvania
Kentucky	Tennessee
Nebraska	
States with Both Estate and Inheritance Taxes – 2 States	
Maryland	New Jersey
States with Gift Taxes – 1 State	
Connecticut	

Tennessee repealed its inheritance tax in 2011, effective for deaths after December 31, 2015.

State Estate and Inheritance Taxes



The exemption amounts for the state taxes are typically lower than the exclusion under the federal estate tax (\$5.43 million for 2015 deaths). Of the states with estate taxes, two (Hawaii and Delaware) have exemptions tied to the federal exclusion amount, Illinois has a \$4 million exemption, Vermont has a \$2.75 million exemption, and the rest lower amounts (two states and the District of Columbia have \$1 million exemptions). Maryland and New York both enacted legislation in 2014 that phases their estate tax exemptions up to the federal amount over a multiyear period (effective for 2019 deaths in both cases). Minnesota and Rhode Island also both increased their exemption amounts in 2014. Maine increased its exemption to the federal amount for 2016 deaths. Several states have recently enacted deductions or exemptions for farm and business property.

Inheritance taxes typically do not apply to amounts left to lineal heirs (children, grandchildren, or parents), although exemption amounts are typically lower than under estate taxes. The inheritance taxes in Nebraska and Pennsylvania, however, do apply to lineal heirs. The Tennessee inheritance tax is structured like an estate tax with a \$5 million exemption for 2015 and is repealed starting in 2016.

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. Since 2011 four states have repealed their taxes; three of these repeals are effective and one (Tennessee) will take effect in 2016. This brief surveys state estate, inheritance, and gift taxes in the 50 states, providing some detail on their exemption amounts, rates, and whether they allow QTIP elections that differ from the federal elections.

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. With the 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.¹ Since the onset of the state budget problems associated with the Great Recession, Delaware, Illinois, and Hawaii have reenacted estate taxes that had expired with repeal of the federal credit (or in the case of Illinois, with repeal of the federal tax for 2010 deaths). The Delaware reenactment was a temporary extension through June 30, 2013, but the 2013 Delaware legislature made the extension permanent. Since 2011, Ohio and North Carolina have repealed their estate taxes; both repeals took effect for 2013 deaths.

2010 and 2013 Federal Estate and Gift Tax Changes Have Implications for State Tax Policy

Under EGTRRA's provisions, the federal estate tax expired for decedents dying in 2010. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TRUIRJCA), enacted in December 2010, reinstated the estate tax and made significant changes in it. TRUIRJCA's changes were temporary but in January 2013, Congress enacted the American Taxpayer Relief Act of 2012 (ATRA), which adopted permanent federal estate tax parameters.

The following four changes, enacted by the combination of TRUIRJCA and ATRA, are important for state transfer tax policy:

- **The federal estate tax rate (45 percent for 2009 deaths) dropped to 40 percent.** TRUIRJCA reduced the rate to 35 percent, but ATRA increased it to 40 percent. The reduction in federal tax rates increases the effective cost of state estate taxes for estates subject to federal tax. Since state estate and inheritance taxes are deductible in computing federal tax, the lower federal tax rate reduces the implicit value of the deduction, increasing the effective burden of state taxes for estates subject to federal tax.
- **The exemption amount (\$3.5 million for 2009 deaths) increased to \$5 million, indexed for inflation.** The higher exemption means more estates will be subject only to state taxes. That raises the effective burden of the state taxes because there is no longer an offset for the federal deduction, but these estates will have more available assets to pay state taxes, since they won't owe any federal tax. The new federal rules create a larger "gap" between most state exemption amounts and the federal exemption, although states have been steadily increasing their exemption amounts since 2013.
- **The federal exemption became "portable"**—that is, a decedent spouse's unused exemption can be passed to the surviving spouse. These new portability rules mitigate the challenge of reconciling differences in the federal and state exemption amounts and create new planning opportunities.
- **The gift tax exemption (\$1 million in 2009) increased to \$5 million, indexed for inflation.** The higher exemption will encourage gifting strategies, as discussed below (page 10), to minimize tax in states without effective taxes on gifts.

Fourteen states and the District of Columbia impose estate taxes on 2015 deaths

For decedents dying in 2015, 14 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 \$675,000 (New Jersey) to \$5,340,000 (two states). Rate schedules also vary with 16 percent as the most common top rate.

The recent trend has been to increase exemption amounts significantly. In 2015, Maine increased its exemption from \$2 million to the federal amount (effective for 2016 deaths). In 2014, four states significantly increased their states' exemption amounts. Maryland increased its exemption amount in five annual steps, starting with 2015 deaths, to the federal amount (fully effective for 2019 deaths); New York similarly is phasing up its exemption amount to the federal amount (effective for 2019 deaths). Minnesota increased its \$1 million exemption to \$2 million in five annual steps of \$200,000 each (\$2 million exemption, effective for 2018 deaths). Rhode Island increased its exemption from \$921,665 to \$1.5 million (effective for 2015 deaths).

Table 2 shows the exemption amounts for decedents dying during 2015 to 2019.

Table 2

State Estate Tax Exemption Amounts Applicable to 2015 - 2019 Deaths (amounts in thousands)					
State	2015	2016	2017	2018	2019
Connecticut ²	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000
Delaware ³	\$5,430*	\$5,450*	Federal	Federal	Federal
D.C. ⁴	\$1,000	\$2,000	\$2,000#	\$2,000#	\$2,000#
Hawaii ⁵	\$5,430*	\$5,450*	Federal	Federal	Federal
Illinois ⁶	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000
Maine ⁷	\$2,000	\$5,450*	Federal	Federal	Federal
Maryland ⁸	\$1,500	\$2,000	\$3,000	\$4,000	Federal
Massachusetts ⁹	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
Minnesota ¹⁰	\$1,400	\$1,600	\$1,800	\$2,000	\$2,000
New Jersey ¹¹	\$675	\$675	\$675	\$675	\$675
New York ¹²	\$3,125	\$4,187.5	\$5,250	\$5,250	Federal
Oregon ¹³	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
Rhode Island ¹⁴	\$1,500	\$1,500	Indexed	Indexed	Indexed
Vermont ¹⁵	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
Washington ¹⁶	\$2,054	\$2,079	Indexed	Indexed	Indexed
*Linked to federal amount which is indexed for inflation; 2015 and 2016 shows actual amount					
#May increase to federal amount under contingent provision depending upon estimates of surplus revenues					

Most state estate taxes have graduated rates with a 16 percent top rate; six states and the District of Columbia 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. All states imposed pickup taxes based on the old federal credit and only a few states had additional or stand-alone estate taxes. The federal credit provided a top rate of 16 percent. Congress repealed the credit effective for deaths in 2005. But states have been slow to enact their own rate schedules and when they have done so, most of the new state rate schedules maintain some resemblance to the federal credit schedule—in particular its top rate of 16 percent. Six states continue to rely on the federal credit calculations to determine state tax. The District of Columbia uses the federal credit calculations for 2015, but has adopted its own rate schedule (with a top rate of 15.2 percent) beginning for 2016 deaths. 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 (2015)			
State	Top Statutory Rate	Basis for Rate Schedule	Special feature of tax
Connecticut ¹⁷	12%	State specific	Max tax of \$20 million applies
Delaware ¹⁸	16%	State specific	Exemption is portable
District of Columbia ¹⁹	16%	Federal credit*	
Hawaii ²⁰	15.7%	State specific	Exemption is portable and reduced by taxable gifts
Illinois ²¹	16%	Federal credit	
Maine ²²	12%	State specific	
Maryland ²³	16%	Federal credit	No bubble rate
Massachusetts ²⁴	16%	Federal credit	
Minnesota ²⁵	16%	State specific	
New Jersey ²⁶	16%	Federal credit	
New York ²⁷	16%	State specific	Exemption phases-out
Oregon ²⁸	16%	State specific	
Rhode Island ²⁹	16%	Federal credit	No bubble rate
Vermont ³⁰	16%	Federal credit	
Washington ³¹	20%	State specific	

*Effective for 2016 deaths, tax rates will be set by the D.C. Code with a top rate of 15.2 percent.

Higher “bubble” marginal rates apply under most state taxes that are based on the repealed federal credit. The top rates listed in Table 4 for federal credit states may not be the real top rate for 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 Table 4's schedule) 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 federal 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.³² 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.³³

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 as a policy matter. These rates apply across a relatively narrow range of taxable value of estates. 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, if at all, 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.³⁴

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 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.³⁵

Special features apply under estate taxes in a few states. The 2015 Connecticut Legislature imposed a \$20 million maximum limit on its estate and gift taxes, effective for decedents dying in 2016 and gifts made in 2015. 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 determined under the

federal gift tax). Delaware and Hawaii both follow the federal portability rules (discussed below). None of the other state taxes that will use the federal exclusion amount (Maine, Maryland, and New York) have either of these features. 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.³⁶ 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

Seven states impose inheritance taxes on 2015 deaths (two of these supplement estate taxes)

In 2001, 11 states imposed inheritance or succession taxes in addition to pickup estate taxes. Since 2001, four states (Connecticut, Indiana, Louisiana, and New Hampshire) have repealed their taxes. Tennessee repealed its inheritance tax for deaths after December 31, 2015. (The structure of the Tennessee tax makes 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 2015. 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 local tax that is administered by counties with the revenue retained by the county.

Table 4

State Inheritance Taxes for 2015 Deaths				
State	Exemption – lineal heirs	Top rate – lineal heirs	Exemption – collateral heirs	Top rate – collateral heirs
Iowa	unlimited ³⁷	N.A.	0 ³⁸	15% ³⁹
Kentucky	unlimited ⁴⁰	N.A.	\$500 ⁴¹	16% ⁴²
Maryland*	unlimited ⁴³	N.A.	\$1,000 ⁴⁴	10% ⁴⁵
Nebraska	\$40,000 ⁴⁶	1% ⁴⁷	\$10,000 ⁴⁸	18% ⁴⁹
New Jersey*	unlimited ⁵⁰	N.A.	\$500 ⁵¹	16% ⁵²
Pennsylvania	\$3,500 ⁵³	4.5% ⁵⁴	0	15% ⁵⁵
Tennessee (eliminated for 2016 deaths)	\$5,000,000 ⁵⁶	9.5% ⁵⁷	\$5,000,000 ⁵⁸	9.5% ⁵⁹
* States with estate taxes in addition to the inheritance 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,⁶⁰ the true inheritance taxes have become taxes on transfers to more distant relatives (e.g., siblings, cousins, nephews, and nieces) and unrelated heirs. Transfers to children (or parents and grandparents) are generally not taxed. Since these are the most likely transfers, 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 compared with its broad application (low exemptions).
- 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.
- Two states, Maryland and New Jersey, have both inheritance and estate taxes. This seeming quirk resulted from the history of these states 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, these two states (unlike the other six states with inheritance taxes) chose to maintain their estate taxes. The taxes are not additive: the estate taxes are 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.⁶¹ North Carolina repealed its gift tax in 2008.⁶² In 2012, Tennessee repealed its gift tax.⁶³ In 2013, Minnesota enacted a gift tax, but then reversed that decision in 2014, repealing the tax retroactively to its original effective date.⁶⁴ 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 million. 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 (\$14,000 for 2015 gifts, indexed for inflation). In addition, the 2015 Connecticut Legislature imposed a maximum tax limit on the gift and estate taxes of \$20 million, effective for gifts made on or after January 1, 2015.⁶⁵

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).⁶⁶ 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. If taxable gifts reduce the estate so that its value drops below the federal estate tax exclusion amount, there appears to be no filing obligation and no estate (and effectively gift) tax owed.⁶⁷

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. Most of the states with these rules had stand-alone inheritance or estate taxes when EGTRRA was enacted. States relying exclusively on pickup taxes had little reason to maintain these rules, since the structure of the federal estate tax did not reward deathbed gifts with tax savings and state pickup taxes were essentially a feature of the federal tax.

States with taxes that do not make provisions for taxing gifts made shortly before or in contemplation of death are now subject to deathbed gift-planning strategies. 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 (see box on page 5) to \$5.43 million (for 2015 gifts) 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 exemption. Previously, gifts over \$1 million would have incurred federal gift tax. If the estate was unlikely to incur federal estate tax (e.g., the taxable value was less than the federal exemption amount), the federal gift tax liability would have exceeded the state tax savings, since the federal rate was 35 percent. Reunification of the federal gift and estate tax exemptions eliminates that barrier.

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.⁶⁸ However, in some states, taxable gifts may be taken into account in determining whether it is necessary to file an estate tax return and, then, typically lifetime taxable gifts will reduce the available exemption amount (federal unified credit). For example, Massachusetts includes lifetime adjusted taxable gifts in its filing requirement.⁶⁹ 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 ⁷⁰
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 ⁷¹
Maine	Estate	N.A.	Gifts above the federal gift tax exclusion made within one year of death are included in the estate ⁷²
Maryland	Inheritance	N.A.	Gifts made within two years of the date of death are presumed taxable under the inheritance tax ⁷³
Minnesota	Estate	N.A.	Gifts above the federal gift tax exclusion made within three years of the date of death are included in the taxable estate and after June 30, 2013 ⁷⁴
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 ⁷⁵
New Jersey	Inheritance	N.A.	Transfers within three years of death deemed made in contemplation of death, absent proof to the contrary ⁷⁶
New York	Estate	N.A.	Gifts above the federal gift tax exclusion made within three years of the date of death and while the decedent was a resident of New York are included in the taxable estate after March 31, 2014 ⁷⁷
Pennsylvania	Inheritance	N.A.	Transfers greater than \$3,000 made within one year of date of death are taxable ⁷⁸

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 most state inheritance and estate taxes are lower than that allowed under the federal estate tax. (For 2015 deaths, two states, Delaware and Hawaii, with estate taxes allowed an exemption as large as federal estate tax's exemption. Five states are scheduled to use the federal exemption by 2019.) 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 died. 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.⁷⁹ 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 over the last 15 years). 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 allowed 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. In adopting the federal exemption amount, Delaware and Hawaii also adopted the portability rules.

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 federal 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

Several 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		
State	Authorized by:	
	Legislation	Administratively
Delaware	X ⁸⁰	
Illinois	X ⁸¹	
Hawaii		X ⁸²
Kentucky		X ⁸³
Maine	X ⁸⁴	
Maryland	X ⁸⁵	
Massachusetts		X ⁸⁶
Minnesota	X ⁸⁷	
New York	X ⁸⁸	
Oregon	X ⁸⁹	
Pennsylvania	X ⁹⁰	
Rhode Island		X ⁹¹
Tennessee	X ⁹²	
Washington	X ⁹³	

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.⁹⁴

For states adopting the federal exclusion amount as their exemption amount, the state exemption is effectively higher than the federal amount for individuals making taxable gifts. Lifetime taxable gifts reduce the federal exclusion amount, but (other than for Hawaii) do not affect the state exemption. As a result, these estates will have higher state than federal exemptions. This will become a more common situation as five states are scheduled (for 2019 deaths) to use the federal exclusion amount and only Hawaii reduces its exemption for lifetime, taxable gifts. Gifts made shortly before death may, however, be pulled into the estate under the rules described in Table 6. This dynamic will reverse the planning challenge described immediately above—planners may seek to preserve the state exemption on the death of the first spouse, rather than the federal exemption. State-only QTIP elections will work for that purpose, as well.

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.⁹⁵ Washington (2013), Pennsylvania (2012 and 2013), Maryland (2012), Minnesota (2011), and Delaware (2009) have recently enacted exemptions or deductions of these types. These provisions likely were enacted to respond to the often expressed concerns that estate or 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.⁹⁶ 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:

- **Delaware agricultural land.** When Delaware reinstated its estate tax in 2009, the legislation provided that the taxable estate was reduced by the value of agricultural land, and agricultural buildings on the land, enrolled in either the farmland assessment or farmland preservation program.⁹⁷ The farmland assessment program is a use value assessment program.⁹⁸ Qualifying farmland must meet minimum acreage or income production rules and have been used for agricultural purposes for the two years prior to the application. The farmland preservation program provides for a ten-year commitment

to place farmland in an agricultural preservation district that restricts use of the land to agricultural purposes.⁹⁹

- **Maryland agricultural property.** A 2012 law exempts up to \$5 million in “qualified agricultural property” from Maryland estate tax.¹⁰⁰ 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.¹⁰¹ 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.¹⁰² Under 2014 legislation, the maximum deduction is set at \$5 million less the amount of the general exemption amount (or \$3.6 million for 2015 deaths: \$5 million - \$1.4 million exemption = \$3.6 million).¹⁰³ 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 as their farm homestead) for three years after the decedent’s death.¹⁰⁴
- **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.¹⁰⁵ 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.¹⁰⁶ 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.
- **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.¹⁰⁷ 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 basic exemption of \$2,054,000), effective for 2015 deaths.¹⁰⁸ A qualified business is defined by reference to federal law.¹⁰⁹ 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.¹¹⁰ A recapture tax, plus interest, applies if this three-year period is not met. In addition, Washington has had a longstanding deduction for farm property that the decedent leaves to a qualifying family member.¹¹¹ 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 taxes¹¹² and the Minnesota estate tax for 2000 to 2014. Total state revenues from the taxes declined by about 41 percent over this period (from \$8 billion in 2000 to \$4.7 billion in 2014), as many states allowed their taxes to expire or reduced or repealed them. The change in revenues net of the federal credit for state death taxes is even more dramatic, but in the opposite direction, going from a net state tax burden of \$1.5 billion in 2000 to \$4.7 billion in 2014. Revenues from the New Jersey, New York, and Pennsylvania taxes make up over half of the revenues. When the data reflect repeal of Indiana, North Carolina, Ohio, and Tennessee taxes and the increases in the Maine, Maryland, Minnesota, New York, and Rhode Island exemptions, national revenues are likely to decline further.

Minnesota's revenues fluctuated significantly from year to year, but grew over the period, reflecting the stability of its tax parameters and the growth in asset values. (The increases in the Minnesota exemption, enacted in 2014, will reduce revenues significantly but are not reflected in the data.¹¹³) The contrast between Minnesota revenues (growing substantially) and national revenues (declining substantially) show the effects of policy changes, since Minnesota's tax remained largely unchanged over the period, while most state taxes were repealed, expired, or reduced.

Table 7

State Estate, Inheritance, and Gift Tax Revenues Fiscal Years 2000 – 2014 (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%

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 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 took action to “decouple” from the federal law. Thus, legislative inaction would cause 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 would take 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).

² Conn. Gen. Stat. § 12-391(g)(3), https://www.cga.ct.gov/2015/pub/chap_217.htm (accessed November 2, 2015).

³ Del. Code Ann. tit. 30, §1501(3)(c), <http://delcode.delaware.gov/title30/c015/index.shtml> (accessed November 2, 2015).

⁴ D.C. Code Ann. §§ 47-3702(a-1)(1)(A) (setting exemption at \$2 million); 47-181(b) and (c)(13) (allowing for an increase to the “federal level” if a quarterly revenue estimate is sufficient to fund that tax reform priority).

⁵ Haw. Rev. Stat. § 236E-6, http://www.state.hi.us/tax/hrs/hrs_236e.pdf (accessed November 2, 2015). The Hawaii exclusion or exemption amount is reduced by the amount of taxable lifetime gifts, as determined under the federal gift tax.

⁶ 35 Ill. Comp. Stat. § 405/2(b) (2015), <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=609&ChapterID=8> (accessed November 2, 2015).

⁷ Me. Rev. Stat. tit. 36, § 4103 (exclusion for decedents dying in 2015), <http://www.mainelegislature.org/legis/statutes/36/title36sec4103.html> (accessed November 2, 2015); 2015 Me. Pub. Law ch. 267, 609 – 10 (exclusion amount for decedents dying on or after January 1, 2016), <http://www.mainelegislature.org/legis/bills/getDoc.asp?id=49849> (accessed November 2, 2015).

⁸ Md. Code Ann., Tax-Gen. § 7.309 (b)(3)(iii), http://mgaleg.maryland.gov/2016RS/Statute_Web/gtg/7-309.pdf (accessed November 2, 2015). The Department of Legislative Services estimates that the 2014 increase in the exemption will reduce revenues by over \$153 million in fiscal year 2021. Dept. of Leg. Serv., *Fiscal and Policy Note HB 739* (June 16, 2014), http://mgaleg.maryland.gov/2014RS/fnotes/bil_0009/hb0739.pdf (accessed August 4, 2014). When fully phased in, the increased exemption amount is estimated to reduce Maryland estate revenues by 65 percent. *Ibid.* p. 11.

⁹ Mass. Gen. Laws ch. 65c § 2A, <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIX/Chapter65C/Section2A> (accessed November 2, 2015) (exemption amount is determined by reference to the exclusion amount under the now-repealed federal credit for state death taxes).

¹⁰ [Minn. Stat. § 291.03](#) (Minnesota exemption amount is essentially a zero bracket amount in the tax rate tables), <https://www.revisor.mn.gov/statutes/?id=291.03> (accessed November 2, 2015). The 2014 estate tax changes, which included adoption of a stand-alone rate table, when fully effective, are estimated to reduce estate tax revenues by about 37 percent. MN Dept. of Revenue, *Revenue Estimate Omnibus Tax Bill* (April 3, 2014), [http://www.revenue.state.mn.us/research_stats/revenue_analyses/2013_2014/sf0075\(hf1777\)_9.pdf](http://www.revenue.state.mn.us/research_stats/revenue_analyses/2013_2014/sf0075(hf1777)_9.pdf) (accessed August 4, 2014).

¹¹ N.J. Stat. Ann. § 54:38-1 (2015).

¹² 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. 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).

¹³ Or. Rev. Stat. § 118.010(4) (The Oregon exemption amount is a zero bracket amount in the tax rate tables), https://www.oregonlegislature.gov/bills_ors/ors118.html (accessed November 2, 2015).

¹⁴ R.I. Gen. Laws § 44-22-1.1, <http://webserver.rilin.state.ri.us/Statutes/title44/44-22/44-22-1.1.HTM> (accessed November 2, 2015) (statutory dollar amount is expressed as a credit); dollar amount of the exemption is from the Rhode Island Dept. of Revenue, Div. of Taxation, *Rhode Island Tax News* p. 5 (January/February/March 2015), (accessed November, 2015). The 2016 amount is from an October 22, 2015, Announcement from the Rhode Island Dept. of Revenue, Div. of Taxation, <http://www.tax.state.ri.us/Tax%20Website/TAX/Advisory/ADV%202015-17.pdf> (accessed November 2, 2015).

¹⁵ Vt. Stat. tit. 32, § 7442a, <http://legislature.vermont.gov/statutes/section/32/190/07442a> (accessed November 2, 2015).

¹⁶ Wash. Rev. Code § 83.100.020(a)(4), <http://webserver.rilin.state.ri.us/Statutes/title44/44-22/44-22-1.1.HTM> (accessed November 2, 2015). The dollar amount for 2015 deaths is from Dept. of Rev. website, http://dor.wa.gov/content/findtaxesandrates/othertaxes/tax_estatetaxtables.aspx (accessed November 2, 2105). 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 necessarily be the same as the indexing of the federal exclusion amount. *Ibid.*

¹⁷ Conn. Gen. Stat. § 12-391(g)(3), https://www.cga.ct.gov/2015/pub/chap_217.htm (accessed November 4, 2015); the \$20 million maximum tax is effective for estates of decedents dying on or after January 1, 2016, and for gifts made on or after January 1, 2015; Pub. Act 15-244 §§ 174, 175, <https://www.cga.ct.gov/2015/ACT/pa/pdf/2015PA-00244-R00HB-07061-PA.pdf> (accessed November 4, 2015).

¹⁸ Del. Code Ann. tit. 30, ch. 15, <http://delcode.delaware.gov/title30/c015/index.shtml> (accessed November 4, 2015). Delaware tax is computed by deducting the federal exclusion amount and, then, applying the equivalent of the rates under the repealed federal credit for state death taxes.

¹⁹ D.C. Code Ann. § 47-3702.

²⁰ Haw. Rev. Stat. §§ 236E-6 (exclusion amount); 236E-8 (rate schedule), http://www.state.hi.us/tax/hrs/hrs_236e.pdf (accessed November 4, 2015).

²¹ 35 Ill. Comp. Stat. §§ 405/2, 405/3 (2013), <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=609&ChapterID=8> (accessed November 4, 2015).

²² Me. Rev. Stat. tit. 36, § 4103, <http://www.mainelegislature.org/legis/statutes/36/title36sec4103.html> (accessed November 4, 2015).

²³ Md. Code Ann., Tax-Gen. § 7.309, http://mgaleg.maryland.gov/2016RS/Statute_Web/gtg/7-309.pdf (accessed November 4, 2015).

²⁴ Mass. Gen. Laws ch. 65c § 2A, <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIX/Chapter65C/Section2A> (accessed November 4, 2015).

²⁵ Minn. Stat. § 291.03, <https://www.revisor.mn.gov/statutes/?id=291.03> (accessed November 4, 2015).

²⁶ N.J. Stat. Ann. § 54:38-1 (2014).

²⁷ N.Y. Tax Law §§ 951–961 (2014). N.Y. Tax Law § 952(c)(1) contains the phase-out of the exemption amount.

²⁸ Or. Rev. Stat. ch. 118 (2013), https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors118.html (accessed November 4, 2015).

²⁹ R.I. Gen. Laws § 44-22-1.1, <http://www.rilin.state.ri.us/Statutes/TITLE44/44-22/44-22-1.1.HTM> (accessed November 4, 2015).

³⁰ Vt. Stat. tit. 32, § 7442a, <http://legislature.vermont.gov/statutes/section/32/190/07442a> (accessed November 4, 2015).

³¹ Wash. Rev. Code ch. 83.100, <http://apps.leg.wa.gov/rcw/default.aspx?cite=83.100.040> (accessed November 4, 2015).

³² Thus, in a state with a \$1 million exemption, a 41 percent rate would apply to the first about \$95,000 of the estate's value above \$1 million. At that point, the additional tax for added value would be determined under the rates in Table 4.

³³ 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.

³⁴ 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.

³⁵ Md. Code, Tax-Gen. § 7-309(b)(3)(iii) (2013), http://mgaleg.maryland.gov/2016RS/Statute_Web/gtg/7-309.pdf (accessed November 4, 2015). 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 November 4, 2015).

³⁶ See note 12.

³⁷ Iowa Code § 450.9 (2015), <https://www.legis.iowa.gov/docs/code/2015/450.9.pdf> (accessed November 4, 2015).

³⁸ Iowa Dept. of Revenue, Introduction to Iowa Inheritance Tax, <https://tax.iowa.gov/inheritance> (accessed November 4, 2015). No tax applies, however, if the total estate has a value of less than \$25,000. Iowa Code § 450.4(1) (2015), <https://www.legis.iowa.gov/docs/code/2015/450.4.pdf> (accessed November 4, 2015). 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.

³⁹ Iowa Code § 450.10 (2015), <https://www.legis.iowa.gov/docs/code/2015/450.10.pdf> (accessed November 4, 2015). The top rate on bequests to a brother, sister, son-in-law, or daughter-in-law is 10 percent.

⁴⁰ The exemption extends to class A beneficiaries, which include brothers and sisters. Ky. Rev. Stat. §§ 140.070; 140.080 (2015), <http://www.lrc.ky.gov/statutes/statute.aspx?id=28983>; and <http://www.lrc.ky.gov/statutes/statute.aspx?id=28984> (accessed November 4, 2015).

⁴¹ The exemption for nieces and nephews is \$1,000. Ky. Rev. Stat. § 140.080(1)(e) (2015), <http://www.lrc.ky.gov/statutes/statute.aspx?id=28984> (accessed November 4, 2015).

⁴² Ky. Rev. Stat. § 140.070(3) (2015), <http://www.lrc.ky.gov/statutes/statute.aspx?id=28983> (accessed November 4, 2015).

⁴³ The exemption extends to brothers and sisters and spouses of descendants. Md. Code, Tax-Gen. § 7-203(b)(2) (201), http://mgaleg.maryland.gov/2015RS/Statute_Web/gtg/7-203.pdf (accessed October 24, 2013).

⁴⁴ Md. Code, Tax-Gen. § 7-203(g) (2014), http://mgaleg.maryland.gov/2015RS/Statute_Web/gtg/7-203.pdf (accessed November 5, 2015). 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) (2013), http://mgaleg.maryland.gov/2015RS/Statute_Web/get/5-601.pdf (accessed November 5, 2015).

⁴⁵ Md. Code, Tax-Gen., § 7-204(b) (2014), http://mgaleg.maryland.gov/2015RS/Statute_Web/gtg/7-204.pdf (accessed November 5, 2015).

⁴⁶ Neb. Rev. Stat. Ann. § 77-2004, <http://nebraskalegislature.gov/laws/statutes.php?statute=77-2004> (accessed November 5, 2015).

⁴⁷ *Id.* These reduced rates also apply to brothers and sisters.

⁴⁸ Neb. Rev. Stat. Ann. § 77-2006, <http://nebraskalegislature.gov/laws/statutes.php?statute=77-2006> (accessed November 5, 2015); uncles, aunts, nephews, and nieces qualify for a \$15,000 exemption. Neb. Rev. Stat. Ann. § 77-2005, <http://uniweb.legislature.ne.gov/laws/statutes.php?statute=77-2005> (accessed November 5, 2015).

⁴⁹ 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 15 percent tax rate. Neb. Rev. Stat. Ann. § 77-2005, <http://uniweb.legislature.ne.gov/laws/statutes.php?statute=77-2005> (accessed November 5, 2015).

⁵⁰ N.J. Stat. § 54:34-2a (2014).

⁵¹ N.J. Stat. § 54:34-1 (2014). A variety of categorical exemptions apply, such as for life insurance, qualified plans, and so forth. N.J. Stat. § 54-34-4 (2013).

⁵² N.J. Stat. § 54:34-2d (2014).

⁵³ 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).

⁵⁴ 72 Pa. Stat. § 9116(a)(1). Transfers to or for the benefit of minor children are exempt. 72 Pa. Stat. § 9116(a)(1.2).

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

⁵⁶ Tenn. Code Ann. § 67-8-316 (b) (2015). This exemption applies to bequests made to all beneficiaries (i.e., it is not a per-beneficiary exemption). This makes the Tennessee inheritance tax structurally like an estate tax. The exemption amount and tax rates and brackets apply to the value of the estate and do not vary based on the recipients of bequests or gifts.

⁵⁷ Tenn. Code Ann. § 67-8-314 (b) (2015).

⁵⁸ See note 56.

⁵⁹ Tenn. Code Ann. § 67-8-314 (b) (2015).

⁶⁰ While it still applies in 2015, the Tennessee tax also applies to transfers to lineal heirs.

⁶¹ 2007 La. Act 371, <http://www.legis.state.la.us/billdata/streamdocument.asp?did=451028> (accessed July 9, 2010).

⁶² 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).

⁶³ Tenn. Pub. Act ch. 1057, <http://www.tn.gov/sos/acts/107/pub/pc1057.pdf> (accessed August 2, 2012).

⁶⁴ 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).

⁶⁵ Pub. Act 15-244 §§ 174, 175, <https://www.cga.ct.gov/2015/ACT/pa/pdf/2015PA-00244-R00HB-07061-PA.pdf> (accessed November 4, 2015).

⁶⁶ Haw. Rev. Stat. § 236E-6, http://www.capitol.hawaii.gov/hrscurrent/Vol04_Ch0201-0257/HRS0236E/HRS_0236E-0006.htm (accessed November 5, 2015).

⁶⁷ The statute requires any estate with a federal estate tax filing obligation to also file a Hawaii estate tax return. Haw. Rev. Stat. § 236E-5, http://www.capitol.hawaii.gov/hrscurrent/Vol04_Ch0201-0257/HRS0236D/HRS_0236D-0005.htm (accessed November 5, 2015). This would subject estate whose adjusted taxable gifts increase the estate's value above the exclusion amount, since the federal filing obligation takes into account adjusted taxable gifts. However, the instructions for the Hawaii estate tax return indicate that there is no filing obligation if the value on part 2, line 3a of Form 706 is less than the federal exclusion amount. Instructions for Form M-6, p. 1, <http://files.hawaii.gov/tax/forms/2014/m6ins.pdf> (accessed November 5, 2015). The line 3a amount does not include adjusted taxable gifts, which are reported on line 4 of Form 706.

⁶⁸ 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).

⁶⁹ See Massachusetts Dept. of Revenue, *A Guide to Estate Taxes (Applicable to dates of death after January 1, 2003)*, <http://www.mass.gov/dor/individuals/taxpayer-help-and-resources/tax-guides/estate-tax-information/estate-tax-guide.html> (accessed November 4, 2013) (filing requirement includes value of adjusted taxable gifts).

⁷⁰ Iowa Code § 450.3(2), <https://www.legis.iowa.gov/docs/code/2015/450.3.pdf> (accessed November 20, 2015).

⁷¹ Ky. Rev. Stat. § 140.020(2), <http://www.lrc.ky.gov/statutes/statute.aspx?id=28974> (accessed November 20, 2015). For transfers made more than three years before death, it is a question of fact whether a gift was made in contemplation of death.

⁷² Me. Rev. Stat. tit. 36 § 4102(7)(C), <http://www.mainelegislature.org/legis/statutes/36/title36sec4102.html> (accessed November 20, 2015).

⁷³ Md. Code, Tax-Gen § 7-201(d)(1)(iii), http://mgaleg.maryland.gov/2016RS/Statute_Web/gtg/7-201.pdf (accessed November 20, 2015). 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.

⁷⁴ Minn. Stat. § 291.016, subd.2, <https://www.revisor.mn.gov/statutes/?id=291.016> (accessed November 20, 2015).

⁷⁵ Neb. Rev. Stat. § 77-2002(2), <http://nebraskalegislature.gov/laws/statutes.php?statute=77-2002> (accessed November 20, 2015).

⁷⁶ N.J. Rev. Stat. § 54:34-1.c.

⁷⁷ N.Y. Tax Law §§ 954(3). This provision expires for gifts made on or after January 1, 2019.

⁷⁸ 72 Pa. Stat. § 9107(c)(3).

⁷⁹ 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.

⁸⁰ Del. Code Ann. tit. 30, § 1501(4)(d).

⁸¹ Ill. Comp. Stat. § 405/2(b-1) (2014), <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=609&ChapterID=8> (accessed November 23, 2015).

⁸² Dept. of Taxation, *Tax Information Release No. 2010-09* (Oct. 6, 2010), <http://files.hawaii.gov/tax/legal/tir/tir10-09.pdf> (accessed November 23, 2015). Since Hawaii's exemption equals the federal amount for deaths after January 25, 2012, a separate state election is less important as a technique for deferring state tax until the death of the second spouse.

⁸³ 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.

⁸⁴ Me. Rev. Stat. Ann. tit 36 § 4102(6), <http://www.mainelegislature.org/legis/statutes/36/title36sec4102.html> (accessed November 23, 2015). 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 and the Maine exemption.

⁸⁵ Md. Code, Gen-Tax § 7-309(b)(5)(ii), http://mgaleg.maryland.gov/2016RS/Statute_Web/gtg/7-309.pdf (accessed November 23, 2015).

⁸⁶ 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), <http://bit.ly/9g7UWa> (accessed July 11, 2010).

⁸⁷ Minn. Stat. § 291.03, subd. 1d, <https://www.revisor.mn.gov/statutes/?id=291.03> (accessed November 23, 2015).

⁸⁸ N.Y. Tax Law §§ 955(c) (2014).

⁸⁹ Or. Rev. Stat. § 118.016 (special property election); https://www.oregonlegislature.gov/bills_laws/ors/ors118.html (accessed November 23, 2015).

⁹⁰ 72 Pa. Stat. § 9113.

⁹¹ 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 July 12, 2010).

⁹² Tenn. Code §§ 67-8-304 (10)(A); 67-8-315(a)(6) (2013).

⁹³ Wash. Rev. Code § 83.100.047, <http://apps.leg.wa.gov/rcw/default.aspx?cite=83.100.047> (accessed August 6, 2014). 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).

⁹⁴ 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), available at <http://www.ct.gov/drs/lib/drs/publications/pubssn/2005/sn05-10.pdf> (accessed August 6, 2014). For New York see note 88 and for Maine, see note 84.

⁹⁵ 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/2016RS/Statute_Web/gtg/7-218.pdf (accessed November 23, 2015); 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 November 23, 2015).

⁹⁶ It’s unclear to what extent late purchases of business assets 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 contain the revenue cost of the provisions and to address the political rhetoric that is often used to oppose estate and inheritance taxes.

⁹⁷ Del. Code Ann. tit. 30 § 1501(4)(c), <http://delcode.delaware.gov/title30/c015/index.shtml> (accessed November 23, 2015).

⁹⁸ Del. Code Ann. tit. 9, §§ 8329 – 8337, <http://delcode.delaware.gov/title9/c083/sc01/index.shtml> (accessed November 23, 2015).

⁹⁹ Del. Dep’t of Agriculture, *Farmland Preservation and Planning*, http://dda.delaware.gov/aglands/Indpres_prog.shtml (accessed November 23, 2015).

¹⁰⁰ Md. Code, Tax-Gen. § 7-309(c) (2014), http://mgaleg.maryland.gov/2016RS/Statute_Web/gtg/7-309.pdf (accessed November 23, 2015).

¹⁰¹ 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/2016RS/Statute_Web/gtg/7-309.pdf (accessed November 23, 2015).

¹⁰² Minn. Stat. §§ 291.005, subd. 1; 291.03, subd. 8-11, <https://www.revisor.mn.gov/statutes/?id=291.005> (accessed November 23, 2015). 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 November 23, 2015).

¹⁰³ Minn. Stat. § 291.016, subd. 3, <https://www.revisor.mn.gov/statutes/?id=291.016> (accessed November 23, 2015).

¹⁰⁴ Qualifying family members are defined by reference to section 2032A(e)(2) of the Internal Revenue Code.

[Minn. Stat. § 291.03](https://www.revisor.mn.gov/statutes/?id=291.03), subd. 8, <https://www.revisor.mn.gov/statutes/?id=291.03> (accessed November 23, 2015).

¹⁰⁵ 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 November 26, 2013); for a description *see* Pennsylvania Dept. of Rev., *Informational Notice Inheritance Tax 2012-01* (September 6, 2012).

¹⁰⁶ 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 November 26, 2013).

¹⁰⁷ Or. Rev. Stat. § 118.140, https://www.oregonlegislature.gov/bills_laws/ors/ors118.html (accessed November 24, 2015). 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). It's unclear if that, for example, requires operating allowances (working capital) to be held in Oregon-based financial institutions. It is likely intended to refer to tangible property, such as land and equipment.

¹⁰⁸ Wash. Rev. Code § 83.100.048, <http://apps.leg.wa.gov/rcw/default.aspx?cite=83.100.048> (accessed November 24, 2015).

¹⁰⁹ I.R.C. § 2057 (e), which effectively restricts it to heavily family-owned businesses.

¹¹⁰ 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.

¹¹¹ Wash. Rev. Code § 83.100.046, <http://apps.leg.wa.gov/rcw/default.aspx?cite=83.100.046> (accessed November 24, 2015).

¹¹² 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.

¹¹³ The revenue effects of Minnesota's increased exemption will first show up in fiscal year 2015 collections.