



State Death Taxes – Potential Impact and Strategies

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Is your estate subject to one or more state death taxes? For a quick answer, refer to the chart at the end of this chapter, check the line for each state in which you own property, and see if there are blanks under the “Estate” and “Inheritance” columns. At time of publication, 26 of our states are essentially not collecting any death taxes. But, you should bear in mind that state death taxes are in a state of flux because many are still coupled to the federal estate tax system, which itself is in major flux, and we are referring to 51 separate jurisdictions, all or nearly all of which are consistently operating in deficit mode. Please “stay tuned” if you are considering relocating to,

or already own property in one or more states that have either an “Estate” or an “Inheritance” tax listed in the chart. Let us briefly define a few terms and discuss the significance of the numerical entries.

“Estate” taxes are based on the size of a decedent’s estate. Historically, few states have had separate estate taxes. More have had “pick-up taxes” tied to the federal credit for state death taxes, which has been phased out. “Inheritance” taxes are levied on one’s right to inherit property. Those inheriting are classified by their degree of relationship to the decedent, with different exemptions and tax rates applied to each class. Spouses and children are often exempt from inheritance taxes; while siblings, nieces, and nephews will generally incur an applicable inheritance tax. While Oregon and Tennessee refer only to an “inheritance tax,” these two states do not appear to distinguish among classes of beneficiaries, so their taxes are listed under “Estate” taxes in the chart.

You may recognize the figures appearing in the “Estate” column of the chart. In 2001, Congress raised the federal estate tax exemption amount from \$675,000 to \$1 million, and to \$2 million in 2008, before increasing it to \$3.5 million for 2009. Most of the states collecting an estate tax currently exempt either the first \$675,000, \$1 million, or \$2 million of the estate. While the states generally publish marginal rates of 5% to 16% on the taxable portions above the exempted amount, it is true that most of these states have effective rates of 37%, 39%, or even 41% on relatively small (approx. \$50,000 to \$100,000) slices of estates just over the respective exemptions of \$675,000, \$1 million, or \$2 million. This hidden reality

creates planning incentives for those with estates that are perhaps 5% to 25% over their state's applicable exemption. Could you, by gifting down to the point of your state's exemption, avoid both the state tax and the need to file any estate tax return?

This is where the concept of “local rule,” and the absolute necessity of consulting local counsel, comes into play. For example, you will note that the chart does not capture the intricacies of exemptions under the various “Inheritance” taxes. On the topic of gifting, several states (including Iowa and North Carolina) have separate gift taxes, and several other states (including New Jersey and Oklahoma) have “clawback” provisions that bring gifts made within 36 months of death back into one's estate for state death tax calculations. Some state death taxes exempt life insurance where the beneficiary is a direct relative (New Jersey), and some state death taxes apply to non-resident owners of local real estate (Maryland).

If you have substantial assets, including property in two or more states, you may want to engage local counsel in each of those states in conversations about “domicile” and “situs,” and the local rules applied to these terms. Generally, domicile is where you spend 183 or more days per year, and situs means place or location. Usually, tangible property has a tax situs where it is physically located, and intangible property has a tax situs at the domicile of the owner. As you can see from the tax chart, there may be reasons to either carefully document or to change your domicile, and possibly to change the situs of property by utilizing certain trustees. If you have property in two or more states, you want to minimize the possibility of being taxed “both coming and going.”

Lastly, if you are considering moving to another state, or choosing between two states where you already own property, please note that the two lefthand columns in the tax chart are not the only pertinent tax factors. Hopefully, you will have many healthy years ahead of you to pay income tax, sales tax, and property tax! Accordingly, the chart also summarizes state income taxes and general sales taxes. Counties and cities often add to the general sales tax, and control property taxes to a degree that the chart cannot capture. For more information on property taxes and the overall state-by-state tax burden, or to check changes in state taxes between future editions of this book, you may find www.retirementliving.com helpful. Bearing in mind that another tax factor in determining the state you choose to live in is how much of each federal tax dollar is returned to that state, you may also wish to track that at www.taxfoundation.com. You should know that thorough research among dozens of Web sites and publications did not yield one single source that was 100% accurate and current regarding all 51 jurisdictions. Thus the caveat above bears repeating: Do consult local counsel in all pertinent states before taking any action.

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STATE	ESTATE	INHERITANCE	INCOME	SALES	NOTE
Alabama			2% - 5%	4%	
Alaska					
Arizona			2.59% - 4.54%	5.6% or 6.3%	
Arkansas			1% - 7%	6%	
California			1%-10.3%	7.25%	incl 1% surcharge on income >\$1mil
Colorado			4.63%	2.90%	
Connecticut	>\$2mil; 5%-16%		3% - 5%	6%	
Delaware			2.2% - 5.95%		
District Columbia	>\$1mil; 5.6%-16%		4% - 8.5%	5.75%	
Florida				6%	
Georgia			1% - 6%	4%	
Hawaii			1.4% -8.25%	4%	
Idaho			1.6% - 7.8%	6%	
Illinois	>\$2 mil; 7.2%-16%		3%	6.25%	
Indiana		1% - 20%	3.40%	7%	
Iowa		1% - 15%	0.36% - 8.98%	5%	3 yr clawback; gift tax a la Fed estate tax ends 12/31/09
Kansas	>\$1mil; 1%-7% 2009		3.5% - 6.45%	5.30%	
Kentucky		4% - 16%	2% - 6%	6%	
Louisiana		2% - 7%	2% - 6%	4%	
Maine	>\$1mil; 5.6%-16%		2% - 8.5%	5%	
Maryland	>\$1mil; 16%	10%	2% - 4.75%	6%	
Massachusetts	>\$1mil; 5.6%-16%		5.3% - 12%	5%	
Michigan			4.35%	6%	inc tax declines 10/1/11
Minnesota	>\$1mil; 5.6%-16%		5.35% - 7.85%	6.50%	
Mississippi			3% - 5%	7%	
Missouri			1.5% - 6%	4.23%	
Montana			1% - 6.9%		
Nebraska		1%-18%	2.56% - 6.84%	5.50%	
Nevada				6.50%	
New Hampshire			5% - wages excluded		
New Jersey	>\$675K; 4.8%-16%	11% - 16%	1.4% - 8.97%	7%	3 year clawback
New Mexico		may be income	1.7% - 5.3%	5%	inheritance taxed as income
New York	>\$1mil; 5.6%-16%		4% - 6.85%	4%	
North Carolina	>\$2mil; 7.2%-16%		6% - 8%	7%	July 08 outside RE exempt; has gift tx
North Dakota			2.1% - 5.54%	5%	
Ohio			0.65% - 6.55%	5.50%	
Oklahoma	>\$3mil; 8.5%-10%		0.5% - 5.65%	4.50%	3 year clawback
Oregon	>\$1mil; 5.6%-16%	see "estate" tax	5% - 9%		*called "inheritance" tax; NO clawback
Pennsylvania		4.5% - 15%	3.07%	6%	
Rhode Island	>\$675K; 4.8%-16%		3.75% - 9.9%	7%	
South Carolina			2.5% - 7%	6%	
South Dakota				4%	
Tennessee	>\$1mil; 5.5%-9.5%	see "estate" tax	6% - wages excluded	7%	only int. & dividends taxed
Texas				6.25%	
Utah			2.3% - 6.98%	4.65%	
Vermont	>\$2mil; 7.2%-16%		3.6% - 9.5%	6%	
Virginia			2% - 5.75%	5%	
Washington	>\$3.5mil; 16%-19%			6.50%	
West Virginia			3% - 6.5%	6%	
Wisconsin	0 in 2009-2010		4.6% - 6.75%	5%	resuming 1/1/11 >\$1mil
Wyoming				4%	