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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. 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. Two states, including Minnesota, impose gift taxes.

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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. Gift taxes are imposed when the property owner is still living and transfers the property.

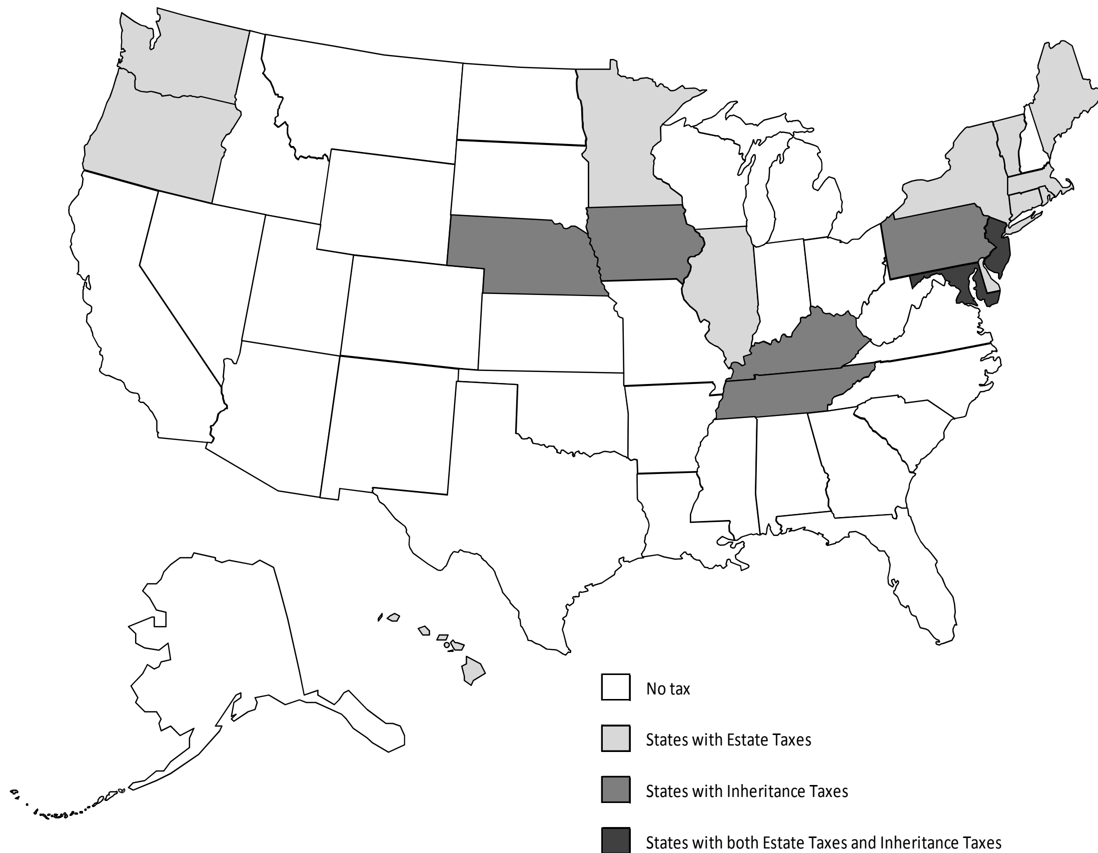
State estate, inheritance, and gift taxes have undergone significant changes since Congress repealed the federal credit for state death taxes in 2001. That credit effectively paid a large portion of these taxes for states. For deaths in 2013, 31 states do not impose these taxes. Table 1 and the map show 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 – 2 States	
Connecticut	Minnesota

Tennessee prospectively repealed its inheritance tax in 2011, effective for deaths after December 31, 2015. The taxes in Indiana (inheritance tax), Ohio (estate tax), and North Carolina (estate tax) were repealed starting for deaths after December 31, 2012.

State Estate and Inheritance Taxes



The exemption amounts for the state taxes are typically lower than the exemption under the federal estate tax ($5,250,000 for 2013 deaths). Of the states with estate taxes, two have exemptions tied to the federal exemption amount, Illinois has a $3.5 million exemption (same as the 2009 federal amount), Vermont has a $2.75 million exemption, two have $2 million exemptions, and the rest $1 million or lower exemptions. Eleven states allow state QTIP (qualified terminable interest property) elections that differ from the federal QTIP election. When a state has a lower exemption than allowed under federal law, these state-only QTIP elections allow married couples to defer paying state tax until the second spouse dies without forgoing or "wasting" part of the higher federal exemption when the first spouse dies. The now portable federal exemption, however, reduces the need for these provisions. Several states have recently enacted deductions or exemptions for farm and business property.

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, as the most recent economic recession is being called, 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 surviving spouses and 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.
- **Gift taxes** complement estate and inheritance taxes, preventing property owners from avoiding tax by making lifetime gifts. Some 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.
- **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, raising the effective burden of the state taxes because there is no longer an offset for the federal deduction (but conversely these estates have more available assets to pay state taxes, since they won't owe any federal tax). In addition, the new federal rules create a larger "gap" between most state exemption amounts and the federal exemption. As discussed below (page 13), a larger gap increases the challenges for planners to develop transfer techniques that minimize both federal and state taxes.
- **The federal exemption became "portable"**—that is, a decedent spouse's unused exemption can be passed to the surviving spouse. These new portability rules (long suggested as a way to simplify estate planning) may mitigate the challenge of reconciling differences in the federal and state exemption amounts.
- **The gift tax exemption ($1 million in 2009) increased to $5 million, indexed for inflation**. The higher (five times bigger) exemption will encourage more deathbed and other 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 2012 deaths

For decedents dying in 2013, 14 states and the District of Columbia impose estate taxes. The details of these estate taxes vary somewhat, but they tend to follow the pattern of equaling the amount of the old federal credit for state death taxes with varying exemption amounts. Five states have estate taxes with state-defined exemption amounts and rate schedules (i.e., rate schedules that vary from the federal credit schedule).

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 most common exemption amount is $1 million (five states and the District of Columbia). Two states (Delaware and Hawaii) have exemptions tied to the federal exemption amount ($5,250,000 for 2013 deaths); one state (Illinois), a $4 million exemption, one (Vermont), a $2.75 million exemption, and two, $2 million exemptions. Tax rate schedules vary with most being based on the old federal credit. Top tax rates range from 12 percent (Connecticut and Maine) to 20 percent (Washington). Table 3 provides details on exemption amounts and top tax rates for the state estate taxes for decedents dying during 2013.

Three legislatures enacted significant changes in their estate taxes in their 2013 legislative sessions. The Delaware legislature made its temporary estate tax (set to expire on July 1, 2013) permanent. The North Carolina legislature repealed its tax, effective for deaths after December 31, 2012. The Washington legislature reversed a court decision holding that QTIP trusts where the first spouse died before the effective date of the tax (in 2005) were not subject to tax on the death of the second spouse. It also revamped its rate structure increasing the top rate from 19 percent to 20 percent and indexed its exemption for inflation (beginning in 2014).

Table 3

State Estate Taxes Applicable to 2013 Deaths (as of September 30, 2013)

State	Exemption Amount	Basis for Rate Schedule	Top Statutory Rate
Connecticut[2]	$2 million	State specific	12%
Delaware[3]	$5,250,000 (indexed for inflation, based on federal exemption)	Federal credit	16%
District of Columbia[4]	$1 million	Federal credit	16%
Hawaii[5]	$5,250,000 (indexed for inflation, based on federal exemption)	State specific	15.7%
Illinois[6]	$4 million	Federal credit	16%
Maine[7]	$2 million	State specific	12%
Maryland[8]	$1 million	Federal credit	16%
Massachusetts[9]	$1 million	Federal credit	16%
Minnesota[10]	$1 million	Federal credit	16%
New Jersey[11]	$675,000	Federal credit	16%

Table 3

State Estate Taxes Applicable to 2013 Deaths (as of September 30, 2013)			
State	**Exemption Amount**	**Basis for Rate Schedule**	**Top Statutory Rate**
New York[12]	$1 million	Federal credit	16%
Oregon[13]	$1 million	State specific	16%
Rhode Island[14]	$910,725 (indexed for inflation)	Federal credit	16%
Vermont[15]	$2.75 million	Federal credit	16%
Washington[16]	$2 million (indexed for inflation)	State specific	20%

States that base their taxes on the amount of the federal credit under prior federal law have "bubble" marginal rates on estates valued just above the exemption amount

Table 4 shows the rate schedule for the federal credit for state death taxes. For states, like Minnesota, that base their estate taxes on the old federal credit, this is essentially the state estate tax rate schedule.

Table 4

Federal Credit for State Death Schedule		
Taxable estate equal to or more than:	**Taxable estate is less than:**	**Credit rate:**
$0	$100,000	0.0%
100,000	150,000	0.8%
150,000	200,000	1.6%
200,000	300,000	2.4%
300,000	500,000	3.2%
500,000	700,000	4.0%
700,000	900,000	4.8%
900,000	1,100,000	5.6%
1,100,000	1,600,000	6.4%
1,600,000	2,100,000	7.2%
2,100,000	2,600,000	8.0%
2,600,000	3,100,000	8.8%
3,100,000	3,600,000	9.6%
3,600,000	4,100,000	10.4%
4,100,000	5,100,000	11.2%
5,100,000	6,100,000	12.0%
6,100,000	7,100,000	12.8%
7,100,000	8,100,000	13.6%
8,100,000	9,100,000	14.4%
9,100,000	10,100,000	15.2%

Table 4

Federal Credit for State Death Schedule		
Taxable estate equal to or more than:	**Taxable estate is less than:**	**Credit rate:**
10,100,000		16.0%
Source: I.R.C. § 2011 (combines credit table and definition of adjusted taxable estate, which is taxable value less $60,000)		

Although the Table 4 rates are essentially the rate schedule for these state taxes based on the old federal credit, 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 tax rates ranged from 18 percent to 55 percent, higher marginal rates apply to values just over the exemption amount than the credit rates in Table 4. 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 the credit rate in Table 4. This includes the credit amount on the estate value below the exemption amount. As a result, the marginal tax rate for a state, like Minnesota, 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.[17] 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 2011), because the applicable federal estate tax rates for those estates differ.

In essence, this peculiar feature of these state taxes takes away the benefit of the exemption amount as estate values increase for these estates. It is worth noting that 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.[18]

Marginal rates are important considerations in the design of an income tax, since they directly affect the incentive to earn (or report) income. It is less clear that these bubble 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 this 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.[19]

State-defined estate taxes (Connecticut, Hawaii, Maine, Oregon, and Washington for 2013 deaths) do not have this peculiar feature. Maryland has limited its tax so that the marginal rates do not exceed the top 16 percent credit rate.[20]

State Inheritance Taxes

Seven states impose inheritance taxes on 2013 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 of these state taxes (Connecticut, Indiana, Louisiana, and New Hampshire) have been repealed or expired. In its 2012 legislative session, Tennessee repealed its inheritance tax for deaths after December 31, 2015. This is done by increasing the exemption amounts each year, decreasing the number of bequests that are subject to tax until the tax is fully phased out in 2016. The 2013 Indiana legislature repealed its inheritance tax, effective for deaths after December 31, 2012.

Table 5 lists the states with inheritance taxes, the exemption amount, and top rates for lineal heirs and collateral heirs for deaths in 2012.

Table 5

State Inheritance Taxes for 2013 Deaths				
State	**Exemption – lineal heirs**[21]	**Top rate – lineal heirs**	**Exemption – collateral heirs**[22]	**Top rate – collateral heirs**
Iowa	unlimited[23]	N.A.	0[24]	15%[25]
Kentucky	unlimited[26]	N.A.	$500[27]	16%[28]
Maryland*	unlimited[29]	N.A.	$1,000[30]	10%[31]
Nebraska	$40,000[32]	1%[33]	$10,000[34]	18%[35]
New Jersey*	unlimited[36]	N.A.	$500[37]	16%[38]
Pennsylvania	$3,500[39]	4.5%[40]	0	15%[41]
Tennessee (phasing out; eliminated for 2016 deaths)	$1,250,000[42]	9.5%[43]	$1,250,000[44]	9.5%[45]
* 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:

- The exemptions for surviving spouses and lineal heirs (typically parents, children, and grandchildren of the decedent) in four states (Iowa, Kentucky, Maryland, and New

Jersey) eliminate tax liability altogether for what are likely the most common heirs. (Nebraska has a nominal rate of 1 percent on lineal heirs.) These exemptions dramatically reduce the burden of the taxes. However, two of these states (Maryland and New Jersey) also have estate taxes.

- The exemptions for these taxes are typically quite a bit lower than for the estate taxes. Putting aside the four states with unlimited exemptions for lineal heirs, this should result in many more estates being subject to the taxes.

- 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 estate taxes, however, are reduced by the amount of the inheritance tax paid, so the two taxes are not additive.

Gift Taxes

Connecticut and Minnesota are the only states that impose true gift taxes

Over the last decade, the few states that imposed stand-alone gift taxes have been largely 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.[46] North Carolina repealed its gift tax in 2008.[47] In 2012, Tennessee repealed its gift tax.[48] In 2013, Minnesota enacted a gift tax, reversing a decision made in 1979 to repeal its gift tax, as part of the transition to imposing only a pickup estate tax.[49] That leaves Connecticut and Minnesota as the only states with stand-alone gift taxes.

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. By contrast, the new Minnesota gift tax is not unified with the estate tax. The gift tax has a flat rate of 10 percent and a lifetime exemption of $1,000,000 (a $100,000 credit against the 10 percent tax). Both states' taxes apply only to gifts that exceed the annual, per-recipient federal exemption amount ($14,000 for 2013 gifts, indexed for inflation). The Minnesota gift tax exemption is separate from the $1 million estate tax exemption, potentially allowing a combined $2 million of exemptions under the two taxes. But the gift tax exemption can be lost if the decedent dies within three years of making gifts that use the exemption, since the estate tax pulls gifts made within three years of death into the adjusted taxable estate.[50]

Seven states impose their estate or inheritance tax on gifts made in contemplation of death or shortly before death

Seven states have provisions designed to tax gifts that are made in contemplation of death or within a 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 on these transfers. 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 stand-alone 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.[51] For these states, a deathbed gift removes the gifted property from the taxable estate and can provide a significant reduction in state tax.[52] The increase in the federal gift tax exemption, enacted as part of TRUIRJCA and made permanent by ATRA (see box on page 5), to $5.25 million (for 2013 gifts) increases the attractiveness of this strategy, since no federal transfer tax would be incurred to make the gift. 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. The $5 million exemption 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.[53] 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, Minnesota includes gifts made within three years of the date in its filing requirement and Massachusetts includes lifetime adjusted taxable gifts in its filing requirement.[54] 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 6 summarizes the state gift tax and gift-in-contemplation-of-death rules.

Table 6

Taxation of Gifts				
State	**Type of death tax**	**Gift tax**	**Top rate of gift tax**	**Gifts-in-contemplation-of-death rules**
Connecticut	Estate	Unified with estate tax	12%[55]	N.A.
Iowa	Inheritance	N.A.	N.A.	Transfers above the federal gift tax exclusion within three years of death, other than bona fide sales, are taxable[56]
Kentucky	Inheritance	N.A.	N.A.	Transfers of material part of estate made three years before death construed prima facie to be made in contemplation of death[57]
Maryland	Inheritance and estate	N.A.	N.A.	Gifts made within two years of the date of death are taxable under the inheritance tax[58]
Minnesota	Estate	Separate, not unified	10%[59]	Gifts made within three years of the date of death are included in the taxable estate[60]
Nebraska	Inheritance	N.A.	N.A.	Gifts made within three years of the date of death subject to inheritance taxation[61]
New Jersey	Inheritance	N.A.	N.A.	Transfers within three years of death deemed made in contemplation of death, absent proof to the contrary[62]
Pennsylvania	Inheritance	N.A.	N.A.	Transfers greater than $3,000 made within one year of date of death are taxable[63]

State-Only QTIPs

Allowing a state qualified terminable interest property (QTIP) election that differs from the federal election allows a married couple to defer paying state tax without forgoing the full federal exemption when the first spouse dies

The exemption amounts under most state inheritance and estate taxes are lower than that allowed under the federal estate tax. (For 2013 deaths, only two states, Delaware and Hawaii, with estate taxes allowed an exemption as large as federal estate tax's exemption.) The differences in the exemption amounts 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 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), as occasionally occurred, these changes operate to reduce the taxes on the combined estate of the couple. Thus, the choice was relatively easy.

A state exemption amount that is lower than the federal exemption presents a sort of Hobson choice when the first spouse dies. The executor or personal representative can opt to defer both federal and state tax by putting only the amount of the state exemption in the credit shelter trust. But this wastes part of the federal exemption and, thus, potentially subjects the estate to a higher federal estate tax on the death of the second spouse.[64] On the other hand, the executor could opt to fund the credit shelter trust at the higher federal exemption amount and pay the (lower) state tax to avoid this risk. However, it is possible that the federal exemption will increase to exempt the entire remaining estate or the entire federal tax will be repealed by the time the second spouse dies. In this circumstance, payment of 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 look like when that happens. The portability of the federal estate tax exemption, enacted by Congress ameliorates, but may not

Portability of the Federal Exemption

Under portability, when the first spouse dies, the surviving spouse inherits the unused exemption; the unused exemption is not "lost." Portability could obviate many of the planning challenges described in the text. 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 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 may prefer to put the higher amount in a credit shelter trust anyway so that increases in its value during the surviving spouse's life are shielded from federal estate tax.

Nevertheless, portability should diminish the urgency to allow state-only QTIP elections.

fully solve this problem. See the discussion in the box entitled "Portability of the Federal Exemption."

To provide more flexibility to planners, many states with estate or inheritance taxes 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 entitled "QTIP Rules" for the definition of the QTIP property. They allow electing the amount of the trust that will qualify for the marital deduction. The rest or nonelected part of the QTIP trust can be used to remove property from the estate of the surviving spouse for estate tax purposes, while still providing income to the surviving spouse and limiting to whom the property will ultimately go. By allowing a different QTIP amount for state and federal tax purposes, the full exemption amounts for both taxes can be claimed, while also deferring tax under both taxes under the last spouse dies.

How this works can be most easily explained with an example. Assume a married couple has a combined estate of $4 million ($2 million owned by each spouse), and their estate plan includes a QTIP trust. The first spouse dies in 2008, when the state exemption is $1 million and the federal exemption is $2 million. If the QTIP election must be identical for federal and state purposes, the personal representative must choose whether to elect a marital deduction of zero (thereby maximizing the federal exemption by allowing the full $2 million to pass into the credit shelter trust) or $1 million (thereby deferring state tax, but "wasting" $1 million of the federal exemption). By contrast, allowing different QTIP elections will allow the personal representative to elect a marital amount of zero for federal purposes and $1 million for state purposes. This allows deferring both taxes without wasting the federal exemption.[65] Table 7 below shows the different taxable estates under the alternative approaches using simplifying assumptions: both spouses die in 2008, there are no other deductions, and so forth. As can be seen in the table, allowing differing state and federal elections allows an alternative to the difficult choice of whether or not to pay state tax on the first death to avoid a potentially higher federal tax on the second death. Ignoring appreciation in assets or income earned between the two deaths and the time value of money, the state taxable amount remains the same, while the estate is permitted to avoid the maximum amount of federal tax.

QTIP Rules

A primary advantage of QTIP property is that the full value of the property qualifies for the marital deduction (avoiding tax on the death of the first spouse), although only a limited income interest is left to the surviving spouse. To be QTIP property, the following criteria must be met:

- The property must be owned by the decedent
- 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 7

Taxable Estates Under Alternative QTIP Election Scenarios						
	First Spouse		Second Spouse		Combined	
	Federal	State	Federal	State	Federal	MN
Uniform election of federal exemption amount	0	$1 million	0	$1 million	0	$2 million
Uniform election of state exemption amount	0	0	$1 million	$2 million	$1 million	$2 million
Differing elections*	0	0	0	$2 million	0	$2 million

*Election of state exemption amount; federal election of federal exemption.
Assumptions: Each spouse has $2 million in property, no other deductions (beside marital deduction) apply, and the exemptions for 2008 apply to both deaths.

Several states with estate or inheritance taxes allow QTIP elections that differ from the federal QTIP elections. Table 8 lists the states, broken down by whether the rule is based on an administrative ruling or legislation.

Table 8

States Allowing Separate QTIP Elections		
	Authorized by:	
State	**Legislation**	**Administratively**
Illinois	x[66]	
Hawaii		x[67]
Kentucky		x[68]
Maine	x[69]	
Maryland	x[70]	
Massachusetts		x[71]
Oregon	x[72]	
Pennsylvania	x[73]	
Rhode Island		x[74]
Tennessee	x[75]	
Washington	x[76]	

Connecticut and Maine have rules that allow state QTIPs that differ from the federal election, but only if no federal QTIP election is made.[77] That provides flexibility to a planner to have differing federal and state exemption amounts, but only by forgoing making a federal QTIP election.

New York[78] allows a state QTIP election for estates that are not subject to federal estate tax. Minnesota[79] allows a state QTIP election for estates that opted out of the federal estate tax for 2010 deaths. These two state-only QTIPs, however, do not address the situation in which estate

planners wish to use a separate state QTIP election to use the full federal exemption amount and avoid paying state tax on the death of the first spouse.

Exemptions or Deductions for Farm and Small Business Property

Some states have had longstanding exemptions, exclusions, or deductions for various types of 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.[80] Several states have recently enacted new exemptions or deductions of these types—Washington (2013), Pennsylvania (2012 and 2013), Maryland (2012), and Minnesota (2011). These provisions likely were enacted to respond to the frequently 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.[81] 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 brief 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.[82] In addition to the exemption, 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 $1 million exemption) being taxed at the 16 percent top rate. Qualified agricultural property is defined as real or personal property used primarily for farming purposes.[83] 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.) 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.** A 2011 law (substantially revised in 2013) provides a $4 million deduction from the Minnesota adjusted taxable estate for qualified farmland and small business property.[84] 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 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.[85]

- **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.[86] 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.[87] 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 natural resource property (farm, forestry, and fishing business property).[88] To qualify, the decedent must have used the property for five out of eight years before his or her death in conducting the farm, forestry, or fishing 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. 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 million).[89] A qualified business is defined by reference to federal law.[90] 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.[91] A recapture tax, plus interest, applies if this three-year period is not met.

Revenues Yielded by the Taxes

Table 9 shows the annual revenues yielded by the state taxes[92] and the Minnesota estate tax for the 2000-2012 period. As shown, state revenues for the nation as a whole declined by about 45 percent over this period (from $8 billion in 2000 to $4.5 billion in 2012), as many states allowed their taxes to expire or reduced or repealed them with the repeal of the federal credit.[93] 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 $4.5 billion in 2012. Minnesota's revenues fluctuate significantly from year to year, but have grown over the period, reflecting the stability of its tax parameters and the general growth in asset values. The contrast between Minnesota revenues (which have grown substantially) and national revenues (which have declined substantially) show the effects of policy changes, since Minnesota's tax remained largely unchanged over the period, while most states repealed, allowed their taxes to expire, or reduced their transfer taxes.

Table 9

State Estate, Inheritance, and Gift Tax Revenues
Fiscal Years 2000 – 2012
(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%

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, http://www.cga.ct.gov/2013/pub/chap_217.htm (accessed October 24, 2013).

[3] Del. Code Ann. tit. 30, ch. 15, http://delcode.delaware.gov/title30/c015/index.shtml (accessed October 24, 2013).

[4] D.C. Code Ann. §§ 47-3701– 47-3723.

[5] Haw. Rev. Stat. ch. 236E, http://www.state.hi.us/tax/hrs/hrs_236e.pdf (accessed October 24, 3013).

[6] 35 Ill. Comp. Stat. § 405/2 (2013), http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=609&ChapterID=8 (accessed October 24, 2013).

[7] Me. Rev. Stat. tit. 36, §§ 4103, http://www.mainelegislature.org/legis/statutes/36/title36sec4103.html (accessed October 24, 2013).

[8] Md. Code Ann., Tax-Gen. §§ 7-301-7.309 (LexisNexis 2012).

[9] Mass. Gen. Laws ch. 65c § 2a, https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIX/Chapter65C/Section2A (accessed October 24. 2013).

[10] Minn. Stat. ch. 291, https://www.revisor.mn.gov/statutes/?id=291&view=chapter (accessed October 24, 2013).

[11] N.J. Stat. Ann. § 54:38-1 (2013).

[12] N.Y. Tax Law §§ 951–961 (2012).

[13] Or. Rev. Stat. ch. 118 (2012), http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors118.html (accessed October 24, 2013).

[14] R.I. Gen. Laws § 44-22-1.1, http://www.rilin.state.ri.us/Statutes/TITLE44/44-22/44-22-1.1.HTM (accessed October 23, 2013); indexed dollar amount of the exemption is from the Rhode Island Department of Revenue, Division of Taxation website, http://www.tax.ri.gov/Advisory/ADV%202012-26.pdf (accessed October 23, 2013).

[15] Vt. Stat. Ann. tit. 32, § 7442a (2010), http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=32&Chapter=190&Section=07442a (accessed October 23, 2013).

[16] Wash. Rev. Code ch. 83.100, http://apps.leg.wa.gov/rcw/default.aspx?cite=83.100 (accessed November 5, 2013).

[17] 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.

[18] 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.

[19] 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.

[20] Md. Code, Tax-Gen, § 7-309(b)(3)(iii) (2013), http://mgaleg.maryland.gov/2014RS/Statute_Web/gtg/7-309.pdf (accessed November 5, 2013).

[21] Lineal heirs are typically children, grandchildren, and parents. Practices vary as to whether spouses (e.g., sons-in-law or daughters-in-law) are included.

[22] Collateral heirs include cousins, aunts, uncles, and unrelated individuals. Some states have intermediate classes of beneficiaries—e.g., typically brothers and sisters (who in other states may be class A or C beneficiaries).
[23] Iowa Code § 450.9 (2013).
[24] Iowa Dept. of Revenue, Introduction to Iowa Inheritance Tax, http://www.iowa.gov/tax/educate/78517.html (accessed October 24, 3013). No tax applies, however, if the total estate has a value of less than $25,000. Iowa Code § 450.4 (2013).
[25] Iowa Code § 450.10 (2) (2013). The top rate on bequests to a brother, sister, son-in-law, or daughter-in-law is 10 percent. Iowa Code § 450.10 (1) (2013).
[26] The exemption extends to class A beneficiaries, which include brothers and sisters. Ky. Rev. Stat. §§ 140.070; 140.080 (2012), http://www.lrc.ky.gov/statutes/statute.aspx?id=28983; and http://www.lrc.ky.gov/statutes/statute.aspx?id=28984 (accessed October 24, 2013).
[27] The exemption for nieces and nephews is $1,000. Ky. Rev. Stat. § 140.080(1)(e) (2012), http://www.lrc.ky.gov/statutes/statute.aspx?id=28984 (accessed October 24, 2013).
[28] Ky. Rev. Stat. § 140.070(3) (2012), http://www.lrc.ky.gov/statutes/statute.aspx?id=28983 (accessed October 24, 2013).
[29] The exemption extends to brothers and sisters and spouses of descendants. Md. Code, Tax-Gen. § 7-203(b)(2) (2013), http://mgaleg.maryland.gov/2014RS/Statute_Web/gtg/7-203.pdf (accessed October 24, 2013).
[30] Md. Code, Tax-Gen, § 7-203(g) (2013), http://mgaleg.maryland.gov/2014RS/Statute_Web/gtg/7-203.pdf (accessed November 5, 2013). 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).
[31] Md. Code, Tax-Gen., § 7-204(b) (2013), http://mgaleg.maryland.gov/2014RS/Statute_Web/gtg/7-204.pdf (accessed November 5, 2013).
[32] Neb. Rev. Stat. Ann. § 77-2004, http://nebraskalegislature.gov/laws/statutes.php?statute=77-2004 (accessed October 24, 2013).
[33] *Id.* These reduced rates also apply to brothers and sisters.
[34] Neb. Rev. Stat. Ann. § 77-2006, http://nebraskalegislature.gov/laws/statutes.php?statute=77-2006 (accessed October 24, 2013).
[35] *Id.*
[36] N.J. Stat. § 54:34-2a (2013).
[37] N.J. Stat. § 54:34-1 (2013). A variety of categorical exemptions apply, such as for life insurance, qualified plans, and so forth. N.J. Stat. § 54-34-4 (2013).
[38] N.J. Stat. § 54:34-2d (2013).
[39] 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.
[40] 72 Pa. Stat. § 9116(a)(1).
[41] 72 Pa. Stat. § 9116(a)(2). Transfers to siblings are taxed at a rate of 12 percent. Pa. Stat. § 2116(a)(1.3).
[42] The exemption increases to $2 million for 2014 deaths and $5 million for 2015 deaths, and the tax is eliminated beginning for 2016 deaths. Tenn. Code Ann. § 67-8-316 (b) (2013). 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 appear to vary based on the recipients of bequests or gifts.
[43] Tenn. Code Ann. § 67-8-314 (b) (2013).
[44] See note 42.
[45] Tenn. Code Ann. § 67-8-314 (b) (2013).
[46] 2007 La. Act 371, http://www.legis.state.la.us/billdata/streamdocument.asp?did=451028 (accessed July 9, 2010).
[47] 2007 N.C. Sess. Laws 2008-107 § 28.18.(a), available here: http://www.ncga.state.nc.us/Sessions/2007/Bills/House/PDF/H2436v9.pdf (accessed July 9, 2010).
[48] Tenn. Pub. Act ch. 1057, http://www.tn.gov/sos/acts/107/pub/pc1057.pdf (accessed August 2, 2012).
[49] 1979 Minn. Laws ch. 303, art. 3 § 41.
[50] A credit is allowed against the estate tax for the gift tax paid, but the gift tax itself is not pulled back into the estate. Minn. Stat. § 291.03, subd. 1(a)(1) (2013 Suppl.), https://www.revisor.mn.gov/statutes/?id=291.03 (accessed October 28, 2013).
[51] These states appear to be Hawaii, Maine, Oregon, and Washington.

[52] As states decoupled, estate planners began suggesting deathbed gift strategies as a way to minimize state estate taxes. See, e.g., Andy Kremer, "New Gifting Incentives: Return of the Deathbed Transfer," *Bench & Bar of Minnesota* 61 (September 2004); Debra L. Stetter, "Deathbed Gifts: A Savings Opportunity for Residents of Decoupled States," *Estate Planning* 31 (2004): 270. Because the recipient takes a carryover basis, a deathbed gift strategy could have adverse individual income tax consequences if appreciated property is given. Giving cash avoids this problem, of course. If the donor does not have cash, it may be possible to borrow on margin to fund the gift.

[53] 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 gift tax paid on gifts made within three years of the date of death).

[54] *See* Minn. Stat. § 289A.10 (2013 Suppl.), https://www.revisor.mn.gov/statutes/?id=289A.10 (accessed November 4, 2013) (filing requirement includes adjusted taxable gifts made within three years of death); and 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).

[55] The top rate applies to gifts over $10.1 million. Conn. Gen. Stat. § 12-642 (2012 Suppl.), http://www.cga.ct.gov/2012/sup/chap228c.htm (accessed November 4, 2013).

[56] Iowa Code § 450.3(2) (2013).

[57] Ky. Rev. Stat. § 140.020(2) (2013), http://www.lrc.ky.gov/statutes/statute.aspx?id=28974 (accessed November 4, 2013). For transfers made more than three years before death, it is a question of fact whether a gift was made in contemplation of death.

[58] Md. Code, Tax-Gen § 7-201(d)(1)(iii) (2013), http://mgaleg.maryland.gov/2014RS/Statute_Web/gtg/7-309.pdf (accessed November 5, 2013). This appears to be a bright-line rule. In addition, other transfers shown to be in contemplation of tax are taxable.

[59] Minn. Stat. § 292.17 (2013 Suppl.), https://www.revisor.mn.gov/statutes/?id=292.17 (accessed October 28, 2013).

[60] Minn. Stat. § 291.01, subd.1(4)(ii) (2013 Suppl.), https://www.revisor.mn.gov/statutes/?id=291.005 (accessed 2013).

[61] Rule applies only if a federal gift tax return is required to be filed and transfers outside of the three-year period are not subject to tax. Neb. Rev. Stat. § 77-2002 (2), http://nebraskalegislature.gov/laws/statutes.php?statute=77-2002 (accessed November 4, 2013).

[62] N.J. Rev. Stat. § 54:34-1.c (2013).

[63] 72 Pa. Stat. § 2107(c)(3).

[64] 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.

[65] It is likely that in most cases this strategy will minimize the total tax burden. However, it is also possible to imagine scenarios in which it could result in higher total state taxes. One side benefit of the approach—not applicable in the example used because there is no federal estate tax obligation—is that it concentrates payment of state estate tax in a year in which it can be used to reduce the amount of the federal taxable estate.

[66] Ill. Comp. Stat. § 405/2(b-1) (2012), http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=609&ChapterID=8 (accessed November 5, 2013).

[67] Dept. of Taxation, *Tax Information Release No. 2010-09* (Oct. 6, 2010), http://www6.hawaii.gov/tax/tir/tir10-09.pdf (accessed August 15, 2012). 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.

[68] 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.

[69] Me. Rev. Stat. Ann. tit 36 § 4102(6), http://www.mainelegislature.org/legis/statutes/36/title36sec4102.html (accessed November 5, 2013). 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 exemption (unified credit) amount and the Maine exemption.

[70] Md. Code, Gen-Tax § 7-309(b)(5)(ii), http://mgaleg.maryland.gov/2014RS/Statute_Web/gtg/7-309.pdf (accessed November 5, 2013).

[71] 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).

[72] Or. Rev. Stat. § 118.016 (special property election); https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors118.html (accessed November 5, 2013).

[73] 72 Pa. Stat. § 9113.

[74] 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).

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

[76] Wash. Rev. Code § 83.100.047, http://apps.leg.wa.gov/rcw/default.aspx?cite=83.100.047 (accessed November 5, 2013). 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).

[77] 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 (10/7/2005), available at http://www.ct.gov/drs/lib/drs/publications/pubssn/2005/sn05-10.pdf (accessed September 25, 2012). For Maine, see note 69.

[78] New York provided administrative guidance that an estate that is not subject to federal tax (either because the federal tax is not in effect or because the value of the estate is less than the exemption amount) could elect a New York QTIP amount. N.Y. State Dept. of Taxation and Finance, "Qualified Terminal Interest Property (QTIP) Election for New York State Purposes When No Federal Return is Required," (March 16, 2010), http://www.tax.state.ny.us/pdf/memos/estate_&_gift/m10_1m.pdf (accessed July 12, 2010).

[79] Minn. Stat. § 291.03, subd. 1b (2011 Suppl), https://www.revisor.mn.gov/statutes/?id=291.03 (accessed October 14, 2011) (allowing the election only to estates that opted out of the federal estate tax in 2010 and prohibiting the election from the reducing the estate below $3.5 million, which essentially prevents use of the provision to defer tax on all amounts over the state exemption of $1 million).

[80] 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/2014RS/Statute_Web/gtg/7-218.pdf (accessed November 6, 2013); Vt. Stat. Ann. tit. 32, § 7443 (2012) (valuation discount for farms qualifying for federal installment payments), http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=32&Chapter=190&Section=07443 (accessed November 6 2013).

[81] 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 to 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.

[82] Md. Code, Tax-Gen. §7-309(c) (2013), http://mgaleg.maryland.gov/2014RS/Statute_Web/gtg/7-309.pdf (accessed November 21, 2013).

[83] This is defined by reference to section 2032A(e)(5) of the Internal Revenue Code. Md. Code, Tax-Gen. § 7-309(c)(1)(II) (2013), http://mgaleg.maryland.gov/2014RS/Statute_Web/gtg/7-309.pdf (accessed November 21, 2013).

[84] Minn. Stat. §§ 291.005, subd. 1; 291.03, subd. 8-11 (2013 Suppl.), https://www.revisor.mn.gov/statutes/?id=291.005; https://www.revisor.mn.gov/statutes/?id=291.03 (accessed November 26, 2013). For a more detailed description of the deduction see Minn. Dept. of Rev., *Qualified Small Business Property and Qualified Farm Property Deduction*, http://www.revenue.state.mn.us/businesses/estate/factsheets/estate_fs2.pdf (accessed November 27, 2013).

[85] 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 November 26, 2013).

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[86] 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).

[87] 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).

[88] Or. Rev. Stat. § 118.140, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors118.html (accessed November 25, 2013).

[89] Wash. Rev. Code § 83.100.046, http://apps.leg.wa.gov/rcw/default.aspx?cite=83.100.046 (accessed November 26, 2013).

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

[91] The qualified heir's death can shorten this period. The qualified heir loss of citizenship or moving the business out of the United States are also disqualifying events. Wash. Rev. Code § 83.100.46(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.

[92] 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.

[93] When the data reflect the repeal of four state taxes (Indiana, North Carolina, Ohio, and Tennessee) that are now effective or pending, total collections should decline by about 10 percent.