



State Death Tax Planning 2024

Rockefeller Insights

What to Know and What Can be Done About State Death Taxes

STATE ESTATE AND INHERITANCE TAXES GENERALLY

With the enactment of the Tax Cut and Jobs Act and the increased estate/gift tax exemptions (currently \$13.61MM per person), as well as the concept of portability (discussed later), fewer individuals and married couples are currently subject to the federal estate tax. However, these individuals and couples, as well as individuals and married couples who are subject to the federal estate tax, may not be focusing their tax and estate planning on another possible layer of death tax – state estate and inheritance taxes (collectively, state death taxes). State estate taxes are generally paid by the estate and are based on the estate's overall value, while inheritance taxes are generally paid by an individual heir on the value of property he or she inherits from the estate.

Currently, twelve states (including the District of Columbia) impose their own estate tax, five states impose an inheritance tax, and one state (Maryland) imposes both an estate tax and an inheritance tax. Of the states that impose an estate tax, the estate tax exemptions (per person) range between \$1,000,000 (Oregon) and up to \$13,610,000 (Connecticut). The estate tax rates in these states



range from 0.8% (Rhode Island, Massachusetts and Illinois) up to a maximum of 20% (Washington State and Hawaii).

Of the states that impose an inheritance tax, the tax is generally based on the relationship of the heir to the decedent and can range from 1% up to 16% of the value of the inherited property.

Please see the attached chart for a complete list of states and their respective state death tax regimes for 2024.

NEW YORK STATE "ESTATE TAX CLIFF"

- The State of New York, in particular, is even more penal. While the State has a standard estate tax exemption amount of \$6,940,000 per person, if the value of a decedent's estate exceeds the \$6,940,000 exemption amount by more than 5% (estates in excess of \$7,287,000), the \$6,940,000 exemption amount is completely forfeited, and the entire value of the estate is subject to New York estate tax (the "Estate Tax Cliff"). The top estate tax rate in New York State is 16% and applies when a decedent's estate is in excess of \$10,100,000. In addition, until January 1, 2026, New York will add back to a decedent's estate the value of any taxable gifts made within three years of his/her death.

PLANNING STRATEGIES

- As the above makes clear, even estates valued at less than the current federal estate tax exemption and/or the heirs of such estates could face a significant state death tax bill if the decedent was a resident of one of the 18 states currently imposing state death taxes. Individuals with estates above the current federal estate tax exemption who reside in these 18 states will face an even greater overall death tax bill than they might anticipate.
- There are several different strategies that could be utilized to eliminate or minimize the amount of state death taxes that are imposed on decedents in these 18 states. These include (i) lifetime gifting, (ii) strategic asset titling, (iii) planning with testamentary trusts, (iv) charitable planning and (v) establishing domicile in a state that does not impose state death taxes.
- Of the 18 states that currently have a state death tax, only one state (Connecticut) has a gift tax on assets an individual gives away during his/her lifetime. This presents a tremendous state death tax planning opportunity. While certain states have “look back” periods, during which certain gifts made in contemplation of death are pulled back into a decedent’s taxable estate, individuals in states with death taxes can make lifetime gifts in order to minimize or eliminate the amount of state death taxes they ultimately pay. This can be done by gifting to an extent that reduces an individual’s gross estate below the state’s estate tax exemption amount (and below the 5% New York State Estate Tax Cliff threshold) or by gifting to reduce their taxable estates for states with graduated estate tax rates. In addition, for the states that impose an inheritance tax, assets gifted to a donee during a donor’s lifetime will generally escape the imposition of the inheritance tax upon the donor’s death.

Lifetime Gifting

- Making lifetime gifts can significantly reduce a decedent’s estate and correspondingly reduce the amount of state death taxes (and federal estate tax, if applicable) a decedent or his/her heirs will pay. Lifetime gifting can consist of annual exclusion gifting (which will not reduce an individual’s available gift/estate tax exemption amount), direct medical or education payments on a donee’s behalf (which also will not reduce an individual’s available gift/estate tax exemption amount), as well as applicable exclusion gifting (which requires the utilization of an individual’s gift/estate tax exemption amount). Regardless of the technique(s) implemented, the gifted amount, as well as any post-gift appreciation, will in most instances escape taxation in the donor’s estate.
- Consider an unmarried individual domiciled and residing in New York State. The New York State estate tax law provides that for decedents dying on or after January 1, 2024, and before January 1, 2025, the New York State estate tax exemption amount is \$6,940,000 per person. However, if the value of decedent’s estate exceeds \$7,287,000, the entire exemption is forfeited, and the full value of the estate is subject to New York estate tax. Finally, until January 1, 2026, New York State will also pull back into a decedent’s estate any taxable gifts made within 3 years of the decedent’s death.

LIFETIME GIFTING (CONTINUED)

- If the individual dies in 2024 with an estate of \$13,000,000 and not having previously used any of his/her lifetime gift tax exclusion, he/she would not be subject to any federal estate tax because his/her estate is below the current federal estate tax exemption amount of \$13,610,000.
- Under current New York estate tax law, however, this client's estate would be subject to \$1,546,800 of New York estate tax. If, however, this same client had previously gifted away \$6,200,000 of his/her assets (and assuming he/she survived the three-year gift look back period for New York State) and died in 2024 with an estate of \$6,800,000, this client's estate would not be subject to any federal or New York state estate tax.

ASSET TITLING

- Under federal estate tax law, if a decedent does not use all of his/her estate/gift tax exemption, the decedent's surviving spouse will generally be able to use the unused portion of the decedent's estate tax exemption during the surviving spouse's lifetime or at his/her death. This is a concept known as portability. Unfortunately, though, not all states (including New York State) have adopted this concept for their estate tax exemptions. As a result, if a decedent dies with unused state estate tax exemption it may not be able to be used by the surviving spouse when he/she subsequently dies. This can lead to state estate tax, or additional state estate tax, if each spouse does not have assets in their respective individual names (or revocable trusts) in an amount equal to or in excess of the state estate tax exemption. As such, if possible, each spouse should review his or her individually owned assets and if necessary, retitle assets between the spouses (or their revocable trusts).

FUNDING TESTAMENTARY TRUST(S) UPON THE DEATH OF FIRST SPOUSE

- Another way to limit the exposure to state estate taxes is to fund a trust(s) for the surviving spouse's benefit upon the death of the first spouse, instead of leaving assets outright to the surviving spouse. The strategy here is multi-fold and can be implemented most effectively after a careful review and potential re-titling of assets as outlined above. First, because some states do not recognize the concept of portability as mentioned above, if the decedent's assets pass outright to the surviving spouse (thus, qualifying for unlimited marital deduction and not using estate tax exemption) and are added to his/her individually held assets, the surviving spouse's estate can be pushed beyond the state's estate tax exemption threshold, as well as potentially into a higher tax bracket for those states with a graduated estate tax regime.
- In the alternative, if a trust was funded with an amount equal to the state's estate tax exemption upon the first spouse's death, that amount would generally not be subject to state estate tax upon the death of the surviving spouse and would not push the surviving spouse's estate above the state estate tax threshold or into a higher estate tax bracket. Furthermore, the appreciation on the assets while in the trust will not be subject to additional state estate tax upon the death of the surviving spouse. The appreciation could, however, be subject to state estate tax upon the surviving spouse's death if the assets were left outright to the surviving spouse (as well as pushing the surviving spouse's estate into a higher estate tax bracket).

FUNDING TESTAMENTARY TRUST(S)
UPON THE DEATH OF FIRST SPOUSE
(CONTINUED)

- Consider a married couple residing in New York State, where there are currently no portability provisions in place. Therefore, any remaining estate tax exemption amount not used by the first spouse at his/her death cannot be used by the surviving spouse at his/her death. The couple has a combined \$13,000,000 estate at the time of the first spouse's death in 2024, all of which passes outright to the surviving spouse. Regardless of how the assets are titled upon the first decedent's death, there will be no federal or New York State estate tax due at the death of the first spouse due to the unlimited marital deduction.
- Further assume that the surviving spouse subsequently dies later in 2024 with the same \$13,000,000 estate. Because New York State does not allow for the portability of a decedent's unused exemption, the surviving spouse would normally only have \$6,940,000 of state exemption to shelter the \$13,000,000 estate. Due to the New York Estate Tax Cliff, the tax exposure is even worse, and the surviving spouse will be treated as having \$0 exemption for New York State estate tax purposes. Consequently, the surviving spouse's estate would be subject to \$1,546,800 of New York State estate tax, due within 9 months of his/her death.
- Instead, imagine that the spouses reviewed their asset titling and retitled their assets so each individually owned \$6,500,000 each. In addition, they updated their estate planning documents to provide that upon the death of the first spouse, a trust for the benefit of the surviving spouse will be funded with an amount up to the New York State estate tax exemption amount (\$6,940,000 in 2024), with the remainder passing outright to the surviving spouse. In our example, upon the death of the first spouse, this trust would be funded with the decedent's entire \$6,500,000 estate. This results in no federal or New York State estate tax due at the death of the first spouse. If the surviving spouse subsequently dies later in 2024 with a \$6,500,000 individual estate and \$6,500,000 in the trust, New York State estate tax will also be completely avoided because the surviving spouse's full New York exemption amount (\$6,940,000) would be available to shield the taxable assets remaining outside of the trust. As clearly illustrated in the given example, retitling assets and using a testamentary trust would save over \$1.54MM in New York State estate taxes.

| | 1 st Decedent's Estate | Tax Due at 1 st Decedent's Death | 2 nd Decedent's Estate | Tax Due at 2 nd Decedent's Death | Total NY State Estate Tax | Net to Heirs |
|------------------|-----------------------------------|---|--|---|---------------------------|--------------|
| No Planning | \$13,000,000 | \$0 | \$13,000,000 (owned outright by surviving spouse) | \$1,546,800 | \$1,546,800 | \$11,454,000 |
| With Planning | \$6,500,000 | \$0 | \$6,500,000 (owned outright by surviving spouse) \$6,500,000 (in trust for surviving spouse but not included in his/her estate) | \$0 | \$0 | \$13,000,000 |
| Benefit to Heirs | - | - | - | - | - | \$1,546,000 |

CHARITABLE PLANNING

- Charitably inclined individuals can also limit their exposure to state death taxes through philanthropic planning. Assets left to qualifying charities generally are eligible for state estate tax charitable deductions, as well as 0% inheritance tax rates. As such, charitably inclined individuals can use strategic charitable planning to their advantage. For example, an individual in a state with an estate tax can leave to charity an amount equal to the exact amount necessary to bring his/her estate below the state's estate tax exemption amount (and below the 5% New York State Estate Tax Cliff threshold). In states with graduated estate tax rates, leaving assets to charity can also reduce a decedent's state estate tax bill by reducing the decedent's taxable estate and correspondingly, putting them into a lower estate tax bracket.

MOVE TO A STATE DEATH TAX FREE STATE

- Of course, if all else fails, an individual can move and attempt to establish domicile in a state that does not impose a state death tax, such as Florida or Delaware, among others.

ACTION STEPS

- In conclusion, while many individuals, couples and heirs may not have to worry about planning for the federal estate tax while the federal gift and estate tax exemptions remain high, there is the real possibility that many of these individuals may be faced with a state death tax that they are not anticipating. The good news is that there is some advanced planning that can be done to help reduce, if not eliminate, the state death taxes these individuals otherwise would be liable for.

| State | Type of State Death Tax | Tax Rates | 2024 State Death Tax Filing Threshold | Recognize Portability? | Look Back Period |
|----------------------|-------------------------|---|---------------------------------------|------------------------|--|
| Alabama | None | | | | |
| Alaska | None | | | | |
| Arizona | None | | | | |
| Arkansas | None | | | | |
| California | None | | | | |
| Colorado | None | | | | |
| Connecticut | Estate Tax | Flat rate of 12% | \$13,610,000 | No | Yes (all taxable gifts since 1/1/2005) |
| Delaware | None | | | | |
| District of Columbia | Estate Tax | Graduated starting at 11.2% up to 16% for net taxable estates in excess of \$10,000,000 | \$4,715,600 | No | No |
| Florida | None | | | | |
| Georgia | None | | | | |
| Hawaii | Estate Tax | Graduated starting at 10% up to 20% for net taxable estates in excess of \$10,000,000 | \$5,490,000 | Yes | Yes (all taxable gifts) |
| Idaho | None | | | | |
| Illinois | Estate Tax | Graduated starting at 0.8% up to 16% for adjusted taxable estates in excess of \$10,040,000 | \$4,000,000 | No | Yes (all taxable gifts) |
| Indiana | None | | | | |
| Iowa | Inheritance Tax | Spouses, lineal ascendants and decedents: 0% Siblings, half-siblings, sons-in-law, and daughters-in-law: 2% (for inheritances over \$150,000) All other individuals: 3 % (for inheritances over \$100,000) | | N/A | Yes (3 years) |
| Kansas | None | | | | |
| Kentucky | Inheritance Tax | Spouses, parents, children, grandchildren, siblings, and half-siblings: 0% Nieces, nephews, daughters-in-law, sons-in-law, aunts, uncles, and great-grandchildren: 4% -16% (for amounts of inheritances in excess of \$200,000) All other individuals: 6% - 16% (for amounts of inheritances in excess of \$60,000) | | N/A | Yes (3 years), unless made for a living reason and not in contemplation of death |

| State | Type of State Death Tax | Tax Rates | 2024 State Death Tax Filing Threshold | Recognize Portability? | Look Back Period |
|---------------|--------------------------------|--|---------------------------------------|------------------------|---|
| Louisiana | None | | | | |
| Maine | Estate Tax | Graduated starting at 8% up to 12% for taxable estates in excess of \$12,800,000 | \$6,800,000 | No | Yes (1 year) |
| Maryland | Estate Tax and Inheritance Tax | <p>Estate Tax: graduated starting at 0.8% up to 16% for adjusted taxable estates in excess of \$10,040,000</p> <p>Inheritance Tax: Spouses, descendants (and their spouses), parents, grandparents, stepchildren, stepparents and siblings: 0%</p> <p>All other individuals: 10%</p> <p>*Please note, individuals are allowed an estate tax credit for the amount of any inheritance tax paid.</p> | \$5,000,000 | Yes | Yes, (all taxable gifts for estate tax purposes and 2 years for inheritance tax purposes) |
| Massachusetts | Estate Tax | Graduated starting at 0.8% up to 16% for adjusted taxable estates in excess of \$10,040,000 | \$2,000,000 | No | Yes (all taxable gifts) |
| Michigan | None | | | | |
| Minnesota | Estate Tax | Graduated starting at 13% up to 16% for taxable estates in excess of \$10,100,000 | \$3,000,000 | No | Yes (3 years) |
| Mississippi | None | | | | |
| Missouri | None | | | | |
| Montana | None | | | | |
| Nebraska | Inheritance Tax | <p>Spouses: 0%</p> <p>Immediate Relatives: 1% (with a \$100,000 per person exemption)</p> <p>Remote Relatives (aunt, uncle, niece, nephew and their descendants and spouses): 11% (with a \$40,000 per person exemption)</p> <p>Other individuals: 15% (with a \$25,000 per person exemption)</p> | | N/A | Yes (3 years), except for annual exclusion and other non-taxable gifts |
| Nevada | None | | | | |
| New Hampshire | None | | | | |
| New Jersey | Inheritance Tax | <p>Spouses, parents, grandparents, descendants, and stepchildren of decedents: 0%</p> <p>Siblings and children's spouse: 11% -16% (\$25,000 per person exemption)</p> <p>All other individuals: 15% - 16% (no exemption)</p> | | N/A | Yes (3 years) |
| New Mexico | None | | | | |
| New York | Estate Tax | Graduated starting at 3.06% up to 16% for taxable estates in excess of \$10,100,000 | \$6,940,000 | No | Yes (3 years) |

| State | Type of State Death Tax | Tax Rates | 2024 State Death Tax Filing Threshold | Recognize Portability? | Look Back Period |
|----------------|-------------------------|--|---------------------------------------|------------------------|---|
| North Carolina | None | | | | |
| North Dakota | None | | | | |
| Ohio | None | | | | |
| Oklahoma | None | | | | |
| Oregon | Estate Tax | Graduated starting at 10% up to 16% for taxable estates in excess of \$9,500,000 | \$1,000,000 | No | No |
| Pennsylvania | Inheritance Tax | Spouses or transfers between parents and children aged 21 or younger: 0% Descendants and lineal heirs: 4.5% Siblings: 12% All other heirs (except charitable organizations, exempt institutions and government entities): 15% | | N/A | Yes (1 year for transfers over \$3,000) |
| Rhode Island | Estate Tax | Graduated starting at 0.8% up to 16% for adjusted taxable estates in excess of \$10,040,000 | \$1,774,583 | No | No |
| South Carolina | None | | | | |
| South Dakota | None | | | | |
| Tennessee | None | | | | |
| Texas | None | | | | |
| Utah | None | | | | |
| Vermont | Estate Tax | Flat rate of 16% | \$5,000,000 | No | Yes (2 years) |
| Virginia | None | | | | |
| Washington | Estate Tax | Graduated starting at 10% up to 20% for taxable estates in excess of \$9,000,000 | \$2,193,000 | No | No |
| West Virginia | None | | | | |
| Wisconsin | None | | | | |
| Wyoming | None | | | | |



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