PLOTTING THE COURSE: MAPPING OUT THE STATE ESTATE, INHERITANCE AND INCOME TAX OPPORTUNITIES FOR THE MULTISTATE CLIENT

NOTRE DAME TAX AND ESTATE PLANNING INSTITUTE

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Erica is also experienced in the administration of complex estates and trusts. This includes not only legal experience, such as petitioning the court for probate, appraisals, sales of estate assets, distributions of estate and trust funds, and post-mortem tax planning, but even more importantly, compassion, patience, and responsiveness.

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Jennifer is a frequent lecturer and author on a wide range of tax and estate planning topics. She enjoys giving back to her peers in an educational setting, helping to keep them up to date on complex tax issues affecting their clients.

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Sixteen states and the District of Columbia still impose an estate or inheritance tax in addition to the federal estate tax. Often, clients who live in states with no estate or inheritance tax own property in jurisdictions that impose such taxes. This outline will explore how the estate and inheritance tax regimes operate in several states and the ways in which a savvy planner can help clients not living in those states mitigate or eliminate those taxes while avoiding traps for the unwary.

I. <u>**Background and History**</u>

Estate and inheritance taxes, controversial as they are, have been levied by governments, monarchies, empires and the like for thousands of years. Even in the relatively new United States, these taxes began appearing well over 200 years ago. Looking back on this history helps provide context for today's taxes as well as some interesting anecdotes!

A. <u>History of Estate and Inheritance Taxes ("Death Taxes")</u>

1. There is evidence that ancient Egyptians (as early as 700 B.C.) levied a 10% tax on transfers of property at death. John R. Luckey, Report for Congress, *A History of Federal Estate, Gift, and Generation Skipping Taxes*, CRS-1, https://www.naepcjournal.org/jounal/issue01f.pdf (last visited August 5, 2025).
2. In feudal England, during the Middle Ages, the king would grant the use of real property to individuals whose estates could retain the property only upon payment of an estate tax. Tallage (medieval European taxation), Britannica Money, https://wwwibritannica.com/money/tallage (last visited August 5, 2025).
3. The United States began taxing assets at death with the enactment of the Stamp Act of 1797, which was repealed by Congress in 1802 and then replaced by a federal inheritance tax, the Tax Act of 1862, the revenues of which were primarily used to fund the Civil War. In 1870, the act was repealed once the war ended and there was no longer a need for the revenue. Luckey at CRS-3, *supra*.
4. The modern United States federal estate tax derives from the Revenue Act of 1916, though prior to this time the estate tax was seen as the jurisdiction of the states, not the federal government. *Id* at CRS-6.
5. States have been imposing death taxes since 1826, when Pennsylvania began imposing an inheritance tax on heirs other than descendants of the decedent. *Carpenter v. Pennsylvania*, 58 U.S. 17 (1854).

6. When the federal government amended the Revenue Act of 1916 to include a credit for death taxes paid to states, all 50 states imposed at least a "pick-up tax" (*i.e.*, a state estate tax equal to the maximum amount of the federal credit); some states imposed an additional estate tax on top of the pick-up tax. Joel Michael, *Survey of State Estate, Inheritance and Gift Taxes* (updated July 2018), https://legislature.vermont.gov/Documents/2016/WorkGroups/House%20Ways%20and%20Means/Miscellaneous%20Tax%20Bill/W~Sara%20Teachout~Survey%20of%20Estate%20and%20Inheritance%20Taxes~2-3-2016.pdf (last visited August 5, 2025).
7. When Congress enacted the Economic Growth and Tax Relief Reconciliation Act ("EGTRRA") in 2001, which phased out and ultimately eliminated the state death tax credit in 2005, the 30 states whose estate tax equaled the pick-up federal state estate tax credit ceased to impose an estate tax. After the passage of EGTRRA, state death taxes paid became a deduction, rather than a credit. *Id*.
8. Today, 12 states and the District of Columbia impose an estate tax and five states impose an inheritance tax (including Maryland, the only state to impose both an estate and inheritance tax), as described below.

B. <u>Estate Tax</u>

1. *Defined*: A tax imposed on the transfer of assets at death to the extent the value of such assets exceeds any exclusion amount, regardless of the relationship between the decedent and recipient (other than United States citizen spouses and charities, for which there is an unlimited marital and charitable deduction, respectively).
2. *Computation*: Broadly, an estate tax is computed by aggregating the fair market value of all assets owned at death (referred to as the "gross estate") and reducing the gross estate by certain deductions and credits to arrive at the "taxable estate." A tax is due if the taxable estate is more than the applicable exclusion from the tax.
3. *Imposition*: Generally, the tax is imposed upon the estate. The taxes may be "taken off the top" prior to distribution to beneficiaries or apportioned among some or all beneficiaries.

C. Inheritance Tax

1. *Defined*: A tax levied on the transfer of assets at death based on the relationship of the decedent to the recipient.
2. *Computation*: The rate often varies based on the value of property transferred, the relationship of the decedent to the recipient and any relevant exemption.
3. *Imposition*: The default rule is that the tax is borne by the recipient who receives the property.

D. Jurisdictions With Estate Tax (2025)

1. *Connecticut*
    a. Exemption: $13,990,000 (unified estate and gift tax exemption), indexed for inflation
    b. Rate of Tax: Flat 12%, up to a maximum of $15,000,000
2. *District of Columbia*
    a. Exemption: $4,873,200 (reduced from $5,762,400 in 2020 to $4,000,000, adjusted for inflation, in 2021)
    b. Rate of Tax: 11.2-16%
3. *Hawaii*
    a. Exemption: $5,490,000 (indexed for inflation, though in some years the Hawaii Department of Taxation does apply an inflation adjustment)
    b. Rate of Tax: 10-20%
    c. *Allows portability
4. *Illinois*
    a. Exemption: $4,000,000 (since 2013)
    b. Rate of Tax: 0.8-16%
5. *Maine*
    a. Exemption: $7,00,000 (adjusted for inflation)
    b. Rate of Tax: 8-12%
6. *Massachusetts*
    a. Exemption: $2,000,000 (law passed in October 2023, retroactive to decedents dying after December 31, 2022, doubling the exemption and eliminating the estate tax “cliff”) (not indexed for inflation)
    b. Rate of Tax: 0.8-16% (reduced by credit of $99,600)
7. *Minnesota*
    a. Exemption: $3,000,000 (since 2020)
    b. Rate of Tax: 13-16%
8. *New York*
    a. Exemption: $7,160,000 (indexed for inflation)
    b. Rate of Tax: 3.06-16% (subject to cliff)

9. *Oregon*
    a. Exemption: $1,000,000 (since 2012)
    b. Rate of Tax: 10-16%
10. *Rhode Island*
    a. Exemption: $1,802,431 (adjusted annually for inflation)
    b. Rate of Tax: 0.8-16%
11. *Vermont*
    a. Exemption: $5,000,000 (since 2021)
    b. Rate of Tax: Flat 16%
12. *Washington*
    a. Exemption as of July 1, 2025 (currently only through December 31, 2025): $3,000,000 (increased from $2,193,000, where it had been since 2018)
    b. Starting January 1, 2026, the exemption will be adjusted for inflation for each subsequent year
    c. Rate of Tax as of July 1, 2025 (currently only through December 31, 2025): 10-35% (maximum rate increased from 10-20%)

E. <u>Jurisdictions With Inheritance Tax (2025)</u>
1. *Kentucky*
    a. Classes of Beneficiaries:
        i. Class A: spouse, parents, children (including stepchildren), grandchildren, siblings (whole and half), charities
        ii. Class B: children of siblings and half-siblings (*i.e.*, not a niece, nephew, half-niece or half-nephew by marriage), daughters-in-law, sons-in-law, aunts, uncles and great-grandchildren
        iii. Class C: anyone other than a Class A or B beneficiary
    b. Exemptions:
        i. Amount: $500 or $1,000 (depending on inheritor's relationship to decedent)
            a) Class B beneficiaries: $1,000 exemption
            b) Class C beneficiaries: $500
        ii. Persons: Class A beneficiaries (wholly exempt)
    c. Rate of Tax: 4-16% (depending on inheritor's relationship to decedent)
        i. Class B beneficiaries:
            a) $1,001-$10,000: 4%
            b) $10,001-$20,000: $360 + 5% over $10,000
            c) $20,001-$30,000: $860 + 6% over $20,000

d) $30,001-$45,000: $1,460 + 8% over $30,000
e) $45,001-$60,000: $2,660 + 10% over $45,000
f) $60,001-$100,000: $4,160 + 12% over $60,000
g) $100,001-$200,000: $8,960 + 14% over $100,000
h) Over $200,000: $22,960 + 16% over $200,000

ii. Class C beneficiaries:

a) $501-$1,000: 6%
b) $1,001-$10,000: $30 + 6% over $1,000
c) $10,001-$20,000: $570 + 8% over $10,000
d) $20,001-$30,000: $1,370 + 10% over $20,000
e) $30,001-$45,000: $2,370 + 12% over $30,000
f) $45,001-$60,000: $4,170 + 14% over $45,000

iii. $60,001-$100,000: $6.270 + 16% over $60,000

a) $100,001-$200,000: $12,670 + 16% over $100,000
b) Over $200,000: $28,670 + 16% over $200,000

2. *Nebraska*

a. Classes of beneficiaries:

i. Class 1: parents, grandparents, siblings, children, lineal descendants, persons to whom the decedent stood in an acknowledged relation of a parent for at least 10 years prior to death, spouse and surviving spouse of any of these relatives and charities

ii. Class 2: uncles, aunts, nieces, nephews and lineal descendants and spouses or surviving spouses of such relatives

iii. Class 3: everyone else

b. Exemptions:

i. Amount: $25,000, $40,000 or $100,000 (depending on inheritor's relationship to decedent)

a) Class I: $100,000
b) Class II: $40,000
c) Class III: $25,000

ii. Persons: spouses only

c. Rate of Tax: 1%, 11% or 15% (depending on inheritor's relationship to decedent)

i. Class 1: 1% for amounts over $100,000
ii. Class 2: 11% for amounts over $40,000
iii. Class 3: 15% for amounts over $25,000

3. *New Jersey*
    a. Exemptions:
        i. Amount: $0 or $25,000, depending on classification of beneficiary
        ii. Persons: Spouse, descendants (including step-children, but not including any other step-relative), ancestors and certain others who stood in a parent-child relationship to decedent (described below)
    b. Rate of Tax: 11-16% (depending on inheritor's relationship to decedent, as detailed below)
4. *Pennsylvania*
    a. Exemptions:
        i. Amount: $0
        ii. Persons: spouse and the parent of a decedent who was under age 22 at death
        iii. Rate of Tax:
            a) Descendants: 4.5%
            b) Siblings: 12%
            c) All others: 15%

F. <u>Jurisdictions With Estate and Inheritance Tax</u>
1. *Maryland*
    a. Estate Tax
        i. Exemption: $5,000,000 (since 2019)
        ii. Rate of Tax: 0.8-16%
        iii. *Allows portability
    b. Inheritance Tax
        i. Exemptions:
            a) Amount: $1,000
            b) Persons: Spouse, descendants (including step-children, but not relatives of step-children), spouses of descendants, ancestors (including step-parents, but not relatives of step-parents) and siblings
        ii. Rate of Tax: 10%

G. <u>Jurisdictions With Gift Tax</u>
1. *Connecticut*
    a. Exemption: $13,990,000 (unified estate and gift tax exemption)
    b. Rate of Tax: Flat 12%, up to a maximum of $15,000,000

II. <u>**Determination of Domicile**</u>

The first inquiry to determine whether a decedent's estate is subject to a state's death tax is whether the decedent was domiciled in that state. The decedent's state of domicile can typically impose its death tax on the decedent's entire estate except for assets sitused outside of that state. Any other state can only impose its death tax on the decedent's property that is sitused in that state, as described below.

A. <u>Federal Estate Tax Definition</u>. For federal estate tax purposes, the definition of domicile is contained within the definition of "resident": "A 'resident' decedent is a decedent who, at the time of his death, had his domicile in the U.S. . . . A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal." Treas. Reg. § 20.0-1(b).

1. Thus, the test for domicile for federal estate tax *purposes* (unlike the test for residency for income tax purposes) is subjective and requires a determination of the decedent's intent.
2. In making *this* determination, courts have historically considered the following factors:
    a. The individual's statements (oral or written) regarding his or her intentions, including statements on visa applications, Wills, trust agreements and deeds.
    b. Amount of time spent in the U.S. versus other countries.
    c. The location, relative size and cost of the individual's residences.
    d. Place where the individual: (a) has religious and social club memberships, (b) engages in business activities, (c) maintains non-business bank accounts, (d) keeps personal items and (e) has family.
    e. The jurisdiction where: (a) the individual is registered to vote and (b) the individual's driver's license was issued. *Estate of Jack v. US*, 54 Fed. Cl. 590 (Fed. Cl. 2002).

B. <u>State Estate Tax Definition</u>. States generally adopt the same or a similar approach when determining whether an individual is a domiciliary of that state.

1. For instance, New York law defines domicile as "[a] fixed, permanent and principal home to which a person wherever temporarily located always intends to return." SCPA §103. It is the place which an individual intends to be his or her permanent home. *Matter of Newcomb*, 192 NY 238 (NY 1908).

a. To change one's domicile in New York, an individual must abandon the former domicile and establish a residence in a new location intending to remain and make a new home. *Newcomb, supra*.

b. An individual who lacks the mental capacity to effectuate a change of domicile generally cannot change his or her domicile. *Matter of Rottenberg*, 19 Misc. 2d 202 (Surr. Ct., N.Y. Cty., 1958).

c. Thus, where an individual was relocated in 1998 from California to an assisted living facility in New York to receive specialized care but always considered California to be her home and intended and hoped to return to California, then died while in a nursing home in New York in 2006 having never returned to California, it was determined that she had not changed her domicile to New York even though she filed her personal income tax returns as a New York resident for tax years 1998-2005. N.Y. Advisory Opinion No. TSB-A-07(1)(M) (2007).

2. Under Illinois law, a decedent is a resident of Illinois if the decedent (i) was in the state for other than a temporary or transitory purpose during the taxable year, or (ii) was domiciled in the state but was absent for a temporary or transitory purposes during the taxable year, at the time of death. 35 ILCS 5/1501(a)(20).

a. Domicile is defined as "…the place where an individual has his or her true, fixed, permanent home and principal establishment, the place to which he or she intends to return whenever absent. It is the place in which an individual has voluntarily fixed the habitation of himself or herself and family, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce adoption of some other permanent home." 86 Ill. Admin. Code 100.3020(d).

b. Over the years, several cases and subsequent changes to the Illinois Administrative Code have provided us with a "road map" of the principal factors that Illinois takes into account when assessing domicile, including:

i. Decedent's intent to reside in, or return to, Illinois;

ii. Location of residences, ownership or rental agreements of such residences, and the state where homestead exemption is claimed;

iii. Location of filing of income tax returns;

iv. The number of days spent in Illinois versus other states;

v. Location/origination state of bank accounts and credit cards;
vi. States where decedent was paid and received income;
vii. State where vehicles are registered;
viii. State that issued decedent's driver's license;
ix. State where decedent is registered to vote;
x. Location of memberships in social, religious and professional organizations, and attendance, participation and contributions to each;
xi. Domicile and governing law of estate planning documents; and,
xii. Presence of the decedent's family.

c. *See generally* 86 Ill. Admin. Code 100.3020*, Cain v. Hamer (2012 IL App. (1st) 112833, Grede v. Illinois Dept. of Revenue (2013 IL App. (2d) 120731-U), and Edmund Sweeney v. Illinois Dept. of Revenue* (No. 2010 L 050524 (Cook Cty. Cir. Ct., June 26, 2013).

3. Similarly, the Washington State Department of Revenue ("WSDOR") provides that a decedent's domicile "is the permanent legal home that the decedent intended to use for an indefinite or unlimited period, and to which, when absent, the decedent intended to return." In other words, the inquiry "is mainly a matter of intention as indicated by the decedent's actions." Washington State Department of Revenue, https://dor.wa.gov/taxes-rates/other-taxes/estate-tax/estate-tax-apportionment-out-of-state-property (last visited August 5, 2025).

a. When determining domicile, the WSDOR considers several factors including:
i. Address used on federal income tax returns.
ii. Where the decedent was registered to vote.
iii. Location of property owned.
iv. Citizenship.
v. Length of residency; however, amount of time spent in one place does not necessarily explain the difference between domicile and home because a home or residence may be temporary for years whereas domicile may be established immediately upon occupying the property.
vi. Business or social ties to the community.

Further, the WSDOR clarifies that the decedent's intent is the determining factor for domicile. *Id*.

III. Situs of Property

As indicated above, if a decedent was not domiciled in a particular state at the time of death, that state does not have the power to impose its death tax on that decedent unless that decedent has property that is considered to have a situs in that state. Thus, the second inquiry in determine a state's ability to impose its death tax on a decedent is whether the decedent had property sitused in the state for death tax purposes.

A. General Rule – Real Property. The general rule for federal estate tax purposes is that real property, which includes land, improvements, fixtures, mineral interests, crops and timber physically located in the United States, is sitused in the United States. Treas. Reg. § 20.2104-1(a)(1); *Laird v. United States*, 115 F. Supp. 931 (W.D. Wis. 1953); *Umsted v. United States*, 35-1 USTC 9130 (W.D. Ark.); *Peebles v. Commissioner*, 5 B.T.A. 386.

B. General Rule – Tangible Personal Property. Similarly, the general rule is that tangible personal property physically located in the United States is situated in the United States for estate tax purposes. Treas. Reg. § 20.2104-1(a)(2). However, property only temporarily in the United States on a transitory basis has been held not have a situs in the United States for estate tax purposes. *Delaney v. Murchie*, 17 F.2d 444 (1st Cir. 1949).

C. State Rules. States follow the same rules when imposing their death taxes, meaning that they impose their death tax on nonresidents only to the extent that real and tangible personal property is situated within the state. *See*, *e.g.*, N.J. Admin. Code §18:26-2.1(a)(2) ("[t]he Act imposes a tax upon transfers…in the case of a nonresident decedent, where such transfers consist of real or tangible personal property owned by such decedent situated in [New Jersey] at the time of death").

D. Federal Courts Applying State Rules. The United States Supreme Court has applied these principles, stating that a state's legal protections and benefits afforded to the owner of property located in the state to "enjoy the fruits of ownership and the power to reach effectively the interests protected" is sufficient to give exclusive taxing authority to the state within which the property is located, and other states are without constitutional power to tax such property since those other states cannot provide "substantial protection" of those rights. *Curry v. McCanless*, 307 U.S. 357 (1939).

   1. The logical result under the above rationale is that a transfer of tangible personal property, for example, cannot be subject to death taxes imposed by multiple states. *City Bank Farmers' Trust Co. v. Schnader*, 293 U.S. 112 (1934).

a. Thus, the United States Supreme Court held that when a New York resident loaned paintings to a museum in Pennsylvania with only a "[m]ere floating intention that some time in the future the pictures would be returned to New York," and then died while the paintings remained on exhibition in Pennsylvania, such paintings were not located in Pennsylvania on a temporary, transient or transitory basis (as argued by New York State), but rather were subject to taxation in Pennsylvania because their situs was "fixed in an established abiding place" and, thereby, maintained "an actual situs" in Pennsylvania (as argued by the Commonwealth of Pennsylvania). *Id*.

E. <u>State Law Considerations</u>. Whether property is situated within a particular state can turn on state law.

1. For example, as described in more detail below, Washington State treats real property located in the state that is held by a decedent in a single-member limited liability company ("LLC") as intangible personal property for estate tax purposes. Special Notice of the Washington State Department of Revenue, Effective June 1, 2020. In other words, Washington real property transferred to an LLC by a nonresident of Washington will be subject to estate tax by the decedent's domicile (if the state of domicile imposes an estate tax), not by Washington.
   a. Conversely, New York State treats real property located in New York and held by a decedent a single-member LLC as New York real property. N.Y. Advisory Opinion No. TSB-A-08(1)M (Oct. 24, 2008).
   b. Illinois presents a third option – it likely would recognize that real property owned by a single member LLC is intangible personal property, but Illinois does not have caselaw or guidance that specifically addresses this type of real property ownership, but Illinois statute suggest that this strategy would work. *See generally* 805 ILCS 180/30-1(a). On the other hand, Illinois statutes expressly include real property physically located in Illinois and owned in a trust that is part of the gross estate. 35 ILCS 405/5(a).
2. It has long been the case that tangible personal property is deemed located in New York State for estate tax purposes when it is habitually kept in New York, even if only for safekeeping. *In re Romaine's Estate*, 127 N.Y. 80 (1891).
   a. Where, however, property is casually brought into the state temporarily (as in the case of a visitor), such property would not be treated as located in the State of New York. *Id*.
   b. Similarly, when a nonresident loans art to a public gallery or museum located within New York State exclusively for exhibition purposes, neither the exhibition of such property in New York nor the transporting of such art to and from the gallery or museum will

cause such work to be sitused in New York for estate tax purposes. N.Y. Tax Law §960(d).

3. In New Jersey, property visibly present on the date of death will not acquire "a permanency of situs" when only temporarily within the state. *George M. Brewster & Sons v. Borough of Bogota*, 83 A.2d 554 (N.J. Super. Ct. 1951).

IV. <u>In Depth Estate and Inheritance Tax Analysis of Select States</u>

In order to fully appreciate the implications of state death taxes on decedents who are not domiciled in a particular state but own property in that state, it is necessary to look at specific state laws. Five states have been selected for this purpose: Illinois, Washington, Connecticut, New York and New Jersey. Four of the five (Illinois, Washington, Connecticut and New York) have estate taxes and one (New Jersey) has an inheritance tax. These states were chosen specifically for the nuances presented by their relevant laws.

A. Illinois Estate Tax

1. <u>History</u>. Originally imposing a "pick up" estate tax, Illinois "decoupled" from the Federal estate tax for the estates of persons dying after 2003. 35 ILCS 405/1 *et. seq.*
2. <u>Filing Threshold</u>. For both residents and non-residents, there is a filing obligation if the gross taxable estate (without deductions) plus adjusted taxable gifts exceeds $4 million, and part, or all, of the taxable estate is sited in Illinois. 35 ILCS 405/2.
3. <u>Determining the Illinois Tentative Taxable Estate</u>. Illinois estate tax is assessed on the decedent's tentative taxable estate.
   a. The starting point for the Illinois estate tax is the decedent's "transferred property," or the federal gross estate as determined under IRC Section 2031. 35 ILCS 405/2.
   b. We then calculate the federal tentative taxable estate by reducing the gross estate by any applicable exclusions and deductions (*e.g.*, expenses, marital deduction, but NOT the deduction for state death tax!). *See generally* IRC Sections 2001 and 2051, and Line 3a on Federal Form 706.
   c. The amount on Line 3a of Form 706 *plus or minus* any property for which an Illinois-only QTIP election was made (as applicable), is the "Illinois Tentative Taxable Estate" for purposes of the Illinois estate tax calculation. *See* Form IL-700.
4. <u>Computation of the Illinois Estate Tax</u>.
   a. The Illinois estate tax is equal to the "state tax credit," as defined in the Illinois Act. 35 ILCS 405/3(b).
   b. The "state tax credit" – as it existed in 2001 under IRC Section 2011 - is calculated as the lesser of:
      i. The federal estate tax calculated on the federal taxable estate (which includes adjusted taxable gifts), but substituting in the

ii. current Illinois exclusion amount of $4 million. Note: the tax calculated is inclusive of the deduction for state death tax paid, and is based on the applicable law and rate schedule in effect in year of death, *e.g.*, the federal tax rate for estates that exceed $4 million in 2025 is 40%; and

iii. The maximum credit under the state death tax credit table under IRC section 2011 (as in effect in 2001). Under the state death tax credit table, the calculation uses the "adjusted taxable estate," which is the federal taxable estate (not including adjusted taxable gifts) reduced by $60,000. Note: the tax calculated is inclusive of the deduction for state death tax paid, but the applicable Illinois exclusion amount is not part of this calculation.

iv. State Death Tax Table:

State Death Tax Credit Table

Adjusted Taxable Estate At Least	But Less Than	Credit	Percent	Of Excess Over
0	40,000	0	0.0%	0
40,000	90,000	0	0.8%	40,000
90,000	140,000	400	1.6%	90,000
140,000	240,000	1,200	2.4%	140,000
240,000	440,000	3,600	3.2%	240,000
440,000	640,000	10,000	4.0%	440,000
640,000	840,000	18,000	4.8%	640,000
840,000	1,040,000	27,600	5.6%	840,000
1,040,000	1,540,000	38,800	6.4%	1,040,000
1,540,000	2,040,000	70,800	7.2%	1,540,000
2,040,000	2,540,000	106,800	8.0%	2,040,000
2,540,000	3,040,000	146,800	8.8%	2,540,000
3,040,000	3,540,000	190,800	9.6%	3,040,000
3,540,000	4,040,000	238,800	10.4%	3,540,000
4,040,000	5,040,000	290,800	11.2%	4,040,000
5,040,000	6,040,000	402,800	12.0%	5,040,000
6,040,000	7,040,000	522,800	12.8%	6,040,000
7,040,000	8,040,000	650,800	13.6%	7,040,000
8,040,000	9,040,000	786,800	14.4%	8,040,000
9,040,000	10,040,000	930,800	15.2%	9,040,000
10,040,000	99,999,999,999	1,082,800	16.0%	10,040,000

v. The Illinois Attorney General provides a calculator on its website to perform the interrelated calculation: https://illinoisattorneygeneral.gov/estate-taxes/2013-2025-estate-calculator (last visited September 1, 2025). There are two inputs required to calculate the tax due:

1. Illinois Tentative Taxable Estate – from line 3a on the Federal Form 706;
2. Illinois Tentative Taxable Estate Plus Adjusted Taxable Gifts – any gifts that are reported on a Form 709.

5. <u>State-Only QTIP</u>: Illinois provides for a state-only QTIP election for spouses and civil unions that is separate and independent of any federal QTIP election. The Illinois QTIP election does not need to be made for a trust for which a federal QTIP election has been made, as the federal QTIP election is sufficient for state purposes. 35 ILCS 405/2.

6. <u>Apportioning Estate Tax for Non-Residents</u>. Illinois estate tax is apportioned to nonresidents by determining the ratio of Illinois assets to total assets in the estate - the numerator being the value of property in Illinois and the denominator being the value of the gross estate. That percentage, multiplied by the full amount of estate tax calculated, is the non-resident decedent's Illinois estate tax obligation. 35 ILCS 405/3(c).

    a. Illinois Sitused Assets for Non-Residents. For non-residents, only real property and tangible personal property that is physically located in Illinois is part of the Illinois taxable estate.

    b. Real Property Owned in Trust. For Illinois real property owned in a trust that is part of the gross estate, such property is considered to be sitused in Illinois, *i.e.*, retitling property to a revocable trust will not change the tax situs of the real property. 35 ILCS 405/5(a)(1).

    c. Real Property Owned in a Land Trust. However, case law suggests that the beneficial interest in a land trust that owns real property physically located in Illinois may be considered intangible personal property not subject to Illinois estate tax. In the *Estate of Swanson*, a beneficial interest held by a nonresident decedent was deemed to be intangible personal property. (*Matter of Estate of Swanson*, 124 Ill.App.3d 276, 463 N.E.2d 1379, 79 Ill.Dec. 604 (1984).

    d. Real Property Owned in an Entity. Real property owned by a corporation, partnership or limited liability company (including single member LLCs) should be characterized as intangible personal property, as the decedent owns the stock, partnership or membership interests, not the real property directly. See 805 ILC 180/30-1(a), which states "[a] member is not a co-owner of, and has no transferable interest in, property of a limited liability company." There is no published case law that directly addresses the issue regarding ownership of real property through a single member LLC.

Example of Nonresident Tax Apportionment:

Tentative Taxable Estate (line 3a from Form 706)	$5,000,000.00
Illinois QTIP Election	$0.00
Illinois Tentative Taxable Estate	$5,000,000.00
Adjusted Taxable Gifts	$0.00
Illinois Tentative Taxable Estate with Gifts	$5,000,000.00
Full amount computed for Illinois Estate Tax (before apportionment)	$285,714.00
Gross Value of decedent's estate having a taxable situs in Illinois	$1,000,000.00
Gross Value of decedent's estate wherever located	$5,000,000.00
Percent of estate having taxable situs in Illinois (Illinois situs/gross value of estate)	20%
Amount of tax attributable to Illinois (% times tax calculated)	$57,142.80

7. Portability. There is no portability of the Illinois exclusion amount between spouses – it is a "use it or lose it" amount. As Illinois does not recognize portability, the value of each asset and deduction must be stated. The ability to estimate the value of assets subject to the marital deduction or charitable deduction under Treasury Regulation 20.2010-2(a)(7)(ii) is not available. 86 Ill. Admin. Code Section 2000.110(c).

B. **Washington State Estate Tax** (changed from inheritance tax (by voter repeal in 1981) to estate tax effective January 1, 1982)

1. Determining Federal Taxable Estate. The starting point for computing the Washington taxable estate is determining the "federal taxable estate"[1] as follows:
   a. First, determine the gross estate, *i.e.*, the date of death fair market value (or alternate valuation method) of assets. WAS 458-57-115(2);
   b. Next, subtract the allowable deductions for expenses, indebtedness, taxes, losses, transfers to charity and spouses. WAS 458-57-115(c).
      i. Note, however, that because Washington is a community property state, funeral expenses reported for a married decedent (as well as any other community debt) must be halved. WAS 458-57-115(c)(i)(A).
      ii. However, administrative expenses are 100% allowable because they are not community debt. *Id*.
2. Determining Washington Taxable Estate. Once the federal taxable estate is determined, the Washington taxable estate is computed as follows:
   a. Value of the federal taxable estate, including property included in the gross estate under Code[2] section 2044, plus
   b. Amounts required to be added to the Washington taxable estate for the marital deduction under RCW 83.100.047, less
   c. The (a) applicable exclusion amount, (b) qualified farm deduction, (c) amount allowed to be deducted under RCW 83.100.047 for the marital deduction and (d) qualified family-owned business interest. WAS 458-57-115(2).
3. State Only QTIP Election Permitted. Washington allows for a separate qualified terminable interest property ("QTIP") election for surviving spouses and state registered domestic partners, even if the deduction would not be permitted under federal law. RCW 83.100.047(a).
   a. To qualify as a domestic partner, both persons must (a) share a common residence; (b) be at least 18 years old and at least one partner must be 62 years old; (c) be unmarried and not part of any other state registered domestic partnership; (d) be capable of consenting to the partnership; and (e) be unrelated (closest degree of permissible kinship is second cousins).

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[1] The "federal taxable estate" is defined as the taxable estate determined under Chapter 11 of the Code without regard to (i) the termination of the federal estate tax under Code section 2210 or any other provision of law; and (ii) the deduction for state death taxes allowable under Code section 2058. WAS 458-57-105(3)(i).

[2] References to the "Code" refer to the Internal Revenue Code of 1986, as amended.

4. Applicable Exclusion Amount. The applicable exclusion amount as of July 1, 2025 is $3,000,000, indexed annually for the federal consumer price index for the Seattle metropolitan area. RCW 83.100.020(1)(a)(viii) and (b).
   a. Until June 30, 2025, Washington's applicable exclusion amount was frozen at $2,193,000 since 2018, despite the intended annual increase to the applicable exclusion amount, when the consumer price index was changed to the Seattle-Tacoma-Bellevue index.
5. Computation of Washington Estate Tax. If the taxable estate exceeds the applicable exclusion amount, the tax is imposed on the Washington taxable estate as follows (WAS 458-57-115(3)(a)):
   i. On first $1,000,000 - 10%
   ii. On amounts over $1,000,000 up to $2,000,000 - $100,000 + 15% of excess over $1,000,000
   iii. On amounts over $2,000,000 up to $3,000,000 - $250,000 + 17% of excess over $2,000,000
   iv. On amounts over $3,000,000 up to $4,000,000 - $420,000 + 19% of excess over $3,000,000
   v. On amounts over $4,000,000 up to $6,000,000 - $610,000 + 23% of excess over $4,000,000
   vi. On amounts over $6,000,000 up to $7,000,000 - $1,070,000 + 26% of excess over $6,000,000
   vii. On amounts over $7,000,000 up to $9,000,000 - $1,330,000 + 30% of excess over $7,000,000
   viii. On amounts over $9,000,000 - $1,930,000 + 35% of excess over $9,000,000
6. Apportionment for Out-of-State Property. If out-of-state property is included in the decedent's gross estate, Washington estate tax is determined by multiplying the Washington estate tax due (as computed above) by the following fraction:
   a. Numerator: value of the property included in the gross estate located in Washington (not including property qualifying for the farm deduction). WAS 458-57-125(2).
   b. Denominator: value of decedent's gross estate (not including property qualifying for the farm deduction). *Id*.
   c. Example (WAS 458-57-125(2)(b)): A widow dies during 2013 leaving a gross estate of $6 million. The decedent was a Colorado resident at death and all of the decedent's property is located in Colorado, except for a vacation home located in Washington valued at $650,000. The estate had $100,000 in expenses deductible for federal estate tax purposes. The applicable exclusion amount for Washington for 2013 is $2,000,000. Under the facts of this example, one first computes the Washington taxable estate, which on these facts is $3,900,000, shown below:

Gross estate:	$6,000,000
Less allowable deductions:	($100,000)
Less applicable exclusion amount:	($2,000,000)
Washington taxable estate:	$3,900,000

Next, one computes the preapportionment Washington estate tax for this estate. Using the above chart, the preapportionment Washington estate tax equals $534,000, computed as follows: $390,000 + ($900,000 x 16%) = $534,000.

Because the decedent owned property located outside Washington, the tax due to Washington is calculated by multiplying the amount of preapportionment tax computed above by the fraction described above. Also, because the decedent was not a Washington resident at death, the numerator of the fraction does not include the value of decedent's intangible personal property. The denominator of the fraction is the value of the decedent's gross estate. Using the facts in this example, the tax owed to Washington equals $57,850, computed as follows: ($650,000/$6,000,000) x $534,000 = $57,850.

7. Property Located in Washington. WAS 458-57-125(3)(a)-(c).
   a. All real property physically situated in Washington (other than federal trust lands) and all interests in such property, including:
      i. Mineral interests;
      ii. Beneficial interests in real property held in trust; and
      iii. Interests in jointly owned property.
      iv. Prior to June 1, 2020, real property located in Washington State that was owned by an LLC was considered an intangible asset located in the decedent's state of domicile, but only if the LLC was operating for a true business purpose. As of June 1, 2020, the Washington State Department of Revenue no longer applies the "true business purpose" test for general estate tax purposes and treats all such property held in an entity as an intangible asset for estate tax purposes. Special Notice of the Washington State Department of Revenue, Effective June 1, 2020.
   b. Tangible personal property, if:
      i. Situated in Washington at the time of death, and
      ii. Is present for a purpose other than transiting the state

iii. Example. A nonresident decedent was a construction contractor doing business as a sole proprietor. The decedent was constructing a large building in Washington. At the time of death, any of the decedent's equipment that was located at the job site, such as tools, earthmovers, bulldozers, trucks, etc., is located in Washington for estate tax purposes because that property was present in the state for a purpose other than transiting the state. WAS 458-57-125(3)(d).

c. Intangible personal property if decedent was a resident of Washington at death.

8. No Portability. Washington does not allow for portability, so a decedent must use the Washington estate tax exemption or lose it!

C. Connecticut Estate and Gift Tax

1. Connecticut Exemption. Connecticut is the only remaining state with a gift tax. Like the federal exemption, the Connecticut exemption is a single, unified exemption applicable to gifts made during life and transfers at death.

2. Phase In of Exemption to Federal Amount.

a. In 2017, the Connecticut exemption was increased to $2,600,000 million for 2018, $3,600,000 million in 2019 and scheduled to match the federal exemption in 2020.

b. However, in 2018, as a result of the change in the federal law to a $10,000,000 million exemption increased for inflation, the Connecticut law was changed to extend the phase-in to 2023 as follows (CT Estate Tax Law §12-391(g)(9)):

i. 2019: $3,600,000 million exemption.

ii. 2020: $5,100,000 million exemption.

iii. 2021: $7,100,000 million exemption.

iv. 2022: $9,100,000 million exemption.

v. 2023 and following: federal exemption.

3. Rate of Tax. Following the full phase-in of the federal exclusion amount, various rate brackets were eliminated and only a flat tax of 12% is imposed on the excess over the exemption remains. *Id*.

4. Imposition of Tax. For nonresidents, the tax is imposed upon all (a) real property situated in and (b) tangible personal property having an actual situs in, Connecticut. CT Estate Tax Law §12-391(e)(2)(A).

a. The presumption is that a decedent is a resident of Connecticut, and the burden is on the decedent's estate to prove that a decedent was not a resident. CT Estate Tax Law §12-391(h)(1).

b. Real or tangible personal property owned by a "pass-through entity" (defined to include a partnership, S corporation or a single-member LLC that is disregarded for federal income tax purposes) is treated for estate tax purposes as Connecticut real or tangible personal property

c. owned by the decedent in proportion to the decedent's constructive ownership in the entity unless (a) the entity carries on a business for profit and gain; (b) the ownership of the property by the entity is for a valid business purpose; or (c) the property was acquired by a bona fide sale for full and adequate consideration and the decedent did not retain any power with respect to or interest in the property that would bring such property within the decedent's federal gross estate. CT Estate Tax Law §12-391(e)(2)(B). There is no clear pronouncement describing what constitutes a "valid business purpose."
   i. Note, however, that this rule appears to apply only to the Connecticut estate tax, and not the Connecticut gift tax.

d. For cooperative apartments, the Connecticut Department of Revenue follows the law of the jurisdiction in which the property is located. Connecticut Department of Revenue Services, https://portal.ct.gov/DRS/Individuals/Individual-Income-Tax-Portal/Estate-and-Gift-Taxes/Tax-Information (last visited August 5, 2025).
   i. Connecticut treats cooperative apartments located in Connecticut as real property for estate and gift tax purposes. *Id*.

5. <u>Computation of Tax for Nonresidents</u>.
   a. Step 1: Calculate the Connecticut taxable estate as follows (CT Taxation §12-391(c)(1)(C)):
      i. Determine the federal gross estate (using date of death values or alternate valuation date values), less
      ii. Allowable federal estate tax deductions, plus
      iii. The aggregate amount of all Connecticut taxable gifts (defined below), other than such gifts includible in the decedent's federal gross estate, plus
         a) "Connecticut taxable gifts" is defined as all taxable gifts (for federal gift tax purposes) made on or after January 1, 2005 that are (A) for Connecticut residents, all such gifts other than gifts of real estate or tangible personal property located outside of Connecticut, and (B) for nonresidents, gifts of real or tangible personal property located within Connecticut. CT Taxation §12-643(3).
      iv. The amount of any gift tax paid by the decedent to Connecticut on any gift made by the decedent or the decedent's spouse during the three-year period immediately prior to the decedent's death.
   b. Step 2: Determine the tentative amount of Connecticut estate tax above using the applicable estate tax rate in effect at the date of death (currently a flat 12% tax).

c. Step 3: Compute the actual Connecticut estate tax due by multiplying the amount of the tentative tax determined in Step 2 by a fraction, the numerator of which is the value of that part of the decedent's gross estate sitused in Connecticut and the denominator of which is the value of the decedent's gross estate. CT Taxation §12-391(e)(1)(D).
   i. A credit is allowed for gift tax paid by the decedent on Connecticut taxable gifts (as defined above) made on or after January 1, 2005 or by the decedent's spouse, to the extent such property is includible in the decedent's gross estate.

d. The maximum estate tax imposed is $15 million, reduced by tax paid by the decedent on Connecticut taxable gifts made after December 31, 2015 by: (a) the decedent or (b) the decedent's spouse, and which are includable in the decedent's gross estate. CT Estate Tax Law §12-391(c)(1)(E).

6. QTIP Election. A state only QTIP election is permitted only if no federal QTIP election is made.
7. No Portability. Use or lose the exemption!
8. Gift Splitting. Connecticut permits spouses to split gifts for gift tax purposes so long as (A) the spouses are married when the gift is made; (B) both spouses are citizens or residents of the United States on the date of the gift; and (C) one spouse does not grant a general power of appointment in the other over the property transferred.

D. New York Estate Tax

1. Filing Threshold. The estate of a nonresident must file a New York estate tax return if (a) the estate includes any New York sitused real or tangible personal property and (b) the value of the nonresident's federal gross estate, plus the amount of any includible taxable gifts, exceeds the basic exclusion amount (currently $7,160,000). NY Tax Law §§954 and 960.
2. Determination of New York Taxable Estate for Nonresidents. The New York taxable estate of a nonresident is determined as follows (NY Tax Law §960):
   a. Value of real and tangible personal property with a situs in New York State which is either:
      i. Includible in decedent's federal gross estate, or
      ii. Which would be includible in decedent's New York gross estate under New York Tax Law section 957 (relating to certain limited powers of appointment) if he were a resident of New York State. Exception for works of art on loan to a public gallery or museum located in the state of New York solely for exhibition purposes, but only if (a) no part of the net earnings of such public gallery or museum inure to the benefit of any private stockholder or individual and (b) such

iii. works are on, or are en route to or from, an exhibition in such public gallery or museum at the time of death.

less

b. Deductions attributable to such New York sitused property, plus

c. Taxable gifts (under §2503 of the Code) made by the decedent within three years of death, but only if such gifts were made (NY Tax Law §§954 and 960):
   i. When the decedent was a New York State resident;
   ii. After April 1, 2014 (except gifts made between January 1-15, 2019 are ignored for this purpose);
   iii. Of real or tangible personal property with a situs in New York State or intangible personal property employed in a business, trade or profession carried on in New York State.

d. Alternate valuation is allowed on a New York estate tax return even if no federal estate tax return is required to be filed, but only if such election will reduce the New York estate tax.

3. State-Only QTIP Election Allowed if No Federal Return Required. If a federal estate tax return is filed, any QTIP election made or not made on the federal return must be the same on the New York estate tax return; no state only QTIP election can be made unless a federal estate tax return is not required to be filed.

4. Treatment of Entities Owning Property Located in New York.

   a. Single-member LLCs owning New York real property, which are disregarded for income tax purposes, are not treated as "intangible property" for New York estate tax purposes. Thus, a nonresident decedent owning a single-member LLC that owns New York real property will be treated as owning New York real property. N.Y. Advisory Opinion No. TSB-A-08(1)M (Oct. 24, 2008).

   b. If a single-member LLC that owns New York real property makes an election to be treated as a corporation for federal income tax purposes, the owner of the entity will be treated as owning intangible personal property, not New York real property. N.Y. Advisory Opinion No. TSB-A-15(1)M (May 29, 2015).

   c. Similarly, a nonresident decedent who owns an interest in an S corporation owning New York real property will be treated as owning an intangible, not New York real property, if the purpose of the S corporation is the equivalent of a business activity or the

   d. carrying on of a business. N.Y. Advisory Opinion No. TSB-A-08(1)M (Oct. 24, 2008).

   e. A nonresident decedent who owns interests in multi-member LLCs that are classified as partnerships for federal income tax purposes, where those LLCs own New York real property, will be treated as owning intangible property, not New York real property. N.Y. Advisory Opinion No. TSB-A-10(1)M (April 8, 2010).

f. Cooperative apartments (but not the contents of such apartments) are treated as intangible personal property for New York estate tax purposes. N.Y. Technical Memoranda No. TSB-M-81(1) (February 20, 1981).

5. <u>Computing the New York Estate Tax (and Falling Off the New York Estate Tax "Cliff")</u> (NY Tax Law §952).

a. The New York estate tax applies to residents and nonresidents alike. New York Tax Law §§952(a) and 960(a).

b. The New York basic exclusion amount is $5,000,000, indexed for inflation. New York Tax Law §952(c)(2)(B) and (C).

c. If the taxable estate is less than or equal to the basic exclusion amount ($7,160,000 in 2025), a credit equal to the tax otherwise due applies to offset the tax entirely. New York Tax Law §952(c)(1).

d. If the taxable estate exceeds the basic exclusion amount by 5% or less, the computation of the applicable credit becomes complicated. In these circumstances, the applicable credit is equal to the amount of tax that would be due if the amount on which the tax were to be computed were equal to the basic exclusion amount multiplied by one minus a fraction, the numerator of which is the decedent's New York taxable estate minus the basic exclusion amount and the denominator of which is 5% of the basic exclusion amount (see illustration of the operation of this rule below). New York Tax Law §952(c)(1).

e. If the taxable estate exceeds the basic exclusion amount by more than 5%, no credit is available (New York Tax Law section 952(c)). The "exclusion amount" disappears and the estate falls off of the proverbial New York estate tax "cliff"; the tax is imposed on 100% of the New York taxable estate as follows (New York Tax Law section 952(b)):

i. On first $500,000 – 3.06%

ii. On amounts over $500,000 up to $1,000,000 - $15,300 + 5% of excess over $500,000

iii. On amounts over $1,000,000 up to $1,500,000 - $40,300 + 5.5% of excess over $1,000,000

iv. On amounts over $1,500,000 up to $2,100,000 - $67,800 + 6.5% of excess over $1,500,000

v. On amounts over $2,100,000 up to $2,600,000 - $106,800 + 8% of excess over $2,100,000

vi. On amounts over $2,600,000 up to $3,100,000 - $146,800 + 8.8% of excess over $2,600,000

vii. On amounts over $3,100,000 up to $3,600,000 - $190,800 + 9.6% of excess over $3,100,000

viii. On amounts over $3,600,000 up to $4,100,000 - $238,800 + 10.4% of excess over $3,600,000

ix. On amounts over $4,100,000 up to $5,100,000 - $290,800 + 11.2% of excess over $4,100,000

x. On amounts over $5,100,000 up to $6,100,000 - $402,800 plus 12% of excess over $5,100,000

xi. On amounts over $6,100,000 up to $7,100,000 - $522,800 + 12.8% of excess over $6,100,000

xii. On amounts over $7,100,000 up to $8,100,000 - $650,800 + 13.6% of excess over $7,100,000

xiii. On amounts over $8,100,000 up to $9,100,000 - $786,800 + 14.4% of excess over $8,100,000

xiv. On amounts over $9,100,000 up to $10,100,000 - $930,800 + 15.2% of excess over $9,100,000

xv. On all amounts over $10,100,000 - $1,082,800 + 16% of excess over $10,100,000

6. No Portability. New York does not allow for portability, so a decedent must use the exemption or lose it!

Chart Illustrating Imposition of New York Estate Tax

New York Taxable Estate	Excess Over Exclusion	New York Estate Tax Due	Effective Tax Rate
$7,160,000	$0	$0	0%
$7,420,000	$260,000	$596,640	8.04%
$7,820,000	$660,000	$748,720	9.57%
$8,220,000	$1,060,000	$804,080	9.78%
$10,220,000	$3,060,000	$1,102,000	10.78%

7. Observations. Note in chart above the following:

a. A taxable estate of $7,420,000 (meaning the value of the estate exceeded the exemption by only $260,000) causes an estate tax of $596,640, which is more than double the amount by which the taxable estate exceeded the exclusion

b. Exceeding the exclusion by $660,000 (a $7,820,000 taxable estate) causes an estate tax of $748,720, which is not much less than exceeding the exclusion by $1,060,000 (an $8,220,000 taxable estate which causes an estate tax of $804,080).

E. **New Jersey Inheritance Tax** (estate tax eliminated in 2018)

1. Imposition of Tax. The New Jersey inheritance tax is imposed on the following transfers by nonresidents that have a value in excess of $500 (NJ Rev. Stat. §54:34-1):

   a. Transfers by Will or intestacy of real or tangible personal property sitused in New Jersey. NJ Rev. Stat. §54:34-1.b.

   b. Gifts of real or tangible personal property sitused in New Jersey within three years of death of the grantor. NJ Rev. Stat. §54:34-1.c.

   c. Transfers of real or tangible personal property sitused in New Jersey where a transferee, distribute or beneficiary comes into the possession or enjoyment of (NJ Rev. Stat. §54:34-1.d):

      i. An estate in expectancy of any kind or character which is contingent or defeasible, or

      ii. Property transferred pursuant to a power of appointment.

   d. Bequests to executors and trustees (a) in lieu of commissions or allowances which would otherwise be taxable and (b) of the residue, and such bequest exceeds what would be reasonable compensation for services. NJ Rev. Stat. §54:34-1.e.

   e. Jointly held real or tangible personal property sitused in New Jersey, but only to the extent of the decedent's contribution to such property. NJ Rev. Stat. §54:34-1.f.

   f. Exceptions:

      i. Real property held by spouses or civil union couples as "tenants by the entirety."

      ii. Sums recovered under the New Jersey Death Act as compensation for wrongful death, except:

         a) Amounts representing damages sustained between the date of injury and the date of death (such as expenses of care, nursing, medical attendance, hospital and other charges incident to the injury, loss of earnings and pain and suffering) are subject to inheritance tax; and

         b) Where an action is initiated under said Act and the action settles without designating the amount to be paid under each count, the amount equal to specific expenses related to the injury, to the extent recovered, are subject to inheritance tax (these amounts are similar to those above and also include funeral expenses).

      iii. Life insurance proceeds, except to the extent payable to the decedent's estate.

2. <u>Inheritance Tax Based on Relationship to Decedent</u>. The New Jersey inheritance tax is imposed based on the relationship to the decedent by dividing people and organizations into "classes" as follows:

a. "Class A" transferees (NJ Admin. Code §18:26-1.1; N.J.S.A. §54:34-2.a)

i. Includes:

a) Parents.

b) Grandparents.

c) Children (biological and adopted).

d) Step-children.

e) Non-biological children where the child was the offspring of a biological parent partner conceived by the artificial insemination of that parent during the term of a marriage, civil union or domestic partnership unless shown that the decedent had not intended to be the parent. *In the Matter of the Parentage of the Child of Kimberly Robinson*, 383 N. J. Super 165 (Ch. Div. 2005).

f) The issue of any child or legally adopted child.

g) Mutually acknowledged children, which are non-adopted children who, for at least 10 years prior to the date of transfer, stood in a mutually acknowledged parent-child relationship with the decedent that began at or before the child's birthday and continued for at least 10 years. To come within this category of "Class A" transferees, the claim on behalf of the transferee must include the following (NJ Admin. Code §18:26-2.5):

1. Date and age child was first taken into the household and a mutually acknowledged child relationship was assumed.
2. Period of time (including dates) the relationship continued.
3. Complete statement of circumstances whereby the child was taken into the household.
4. Source and cost of the child's financial support.
5. Child's biological parentage including where they reside, or, if deceased, dates of death and domicile at death.
6. Person who was established as the parent of the child when the child registered at school

and who signed the child's report cards and similar documents.

7. Identity of person who claimed the child as a dependent on his/her federal income tax return and the relationship claimed on such return.
8. Affidavits of at least two disinterested persons having knowledge of the relationship setting forth the facts as known to them.
9. Additional details that support the claim of the mutually acknowledged parent-child relationship.

h) Spouse.

i) Civil union or domestic partner.

1. Domestic partners must have been registered as such prior to February 19, 2007 and continue to be so registered.
    a. To qualify as a domestic partner, the couple are required to: (i) have a common residence; (ii) be jointly responsible for each other's common welfare (evidenced by financial arrangements or property ownership); (iii) agree to be jointly responsible for each other's basic living expenses; (iv) not be married to or in a domestic partnership with anyone else; (v) be unrelated; (vi) same sex and unable to enter into a marriage recognized in New Jersey' provided that two parsons who are each at least 62 years old and not of the same sex may establish a domestic partnership; (vii) choose to share each other's lives in a committed relationship of mutual caring; (viii) be at least 18 years old; (ix) jointly file an Affidavit of Domestic Partnership; and (x) terminate
    b. any other domestic partnership at least 180 days prior to the filing of the current Affidavit of Domestic
    c. Partnership (other than a prior domestic partnership that ended as a result of one domestic partner's death).

ii. Inheritance tax rate: 0%

b. “Class B” transferees: eliminated by statute effective July 1, 1963.

c. “Class C” transferees:

  i. Includes:

    a) Siblings (including half siblings)

    b) Surviving spouse of a son or daughter.

    c) Surviving civil union partner of a son or daughter.

  ii. Inheritance tax rate:

    a) Up to $25,000 - 0%

    b) $25,000 up to $1,100,000 - 11%

    c) $1,100,000 up to $1,400,000 - 13%

    d) $1,400,000 up to $1,700,000 - 14%

    e) $1,700,000 and over - 16%

d. “Class D” transferees (NJ Admin. Code 18:26-1.1; N.J.S.A. 54:34-2.d):

  i. Includes: Anyone other than a Class “A,” “C” or “E” transferee.

  ii. Inheritance tax rate:

    a) Up to $700,000 - 15%

    b) Over $700,000 - 16%

e. “Class E” transferees (NJ Admin. Code 18:26-1.1; N.J.S.A. 54:34-2.e):

  i. Includes:

    a) The State of New Jersey or any political subdivision thereof.

    b) Tax-exempt organizations that are organized and administered exclusively for religious, benevolent, scientific, literary, educational or charitable purposes in which no part of the net earnings inures to the benefit of any private stockholder or other individual or corporation including, but not limited to, any tax-exempt organization under section 501(c)(3) of the Code; provided, however, that it does not include transfers to such organizations of other jurisdictions that do not grant an equal and like exemption of transfers of property for the benefit of such organizations in New Jersey.

  ii. Inheritance tax rate: 0%

3. <u>How Imposed</u>. The tax is imposed in the following manner (NJ Admin. Code §18:26-2.15):

  a. If property subject to the NJ inheritance tax (*i.e.*, real or tangible personal property sitused in New Jersey) is specifically bequeathed, then the tax is imposed on the recipient at resident rates.

    i. Example in statute: Mr. A, a California domiciliary, died testate on July 3, 2016 and bequeathed real property located in New Jersey worth $10,000 to his nephew, Mr. B, and the rest of his estate to his spouse. First, a tax is computed as if Mr. A had been a New Jersey domiciliary. Mr. B would be liable for $10,000 x 15% = $1,500 tax. All of the property received by Mr. A's spouse would be exempt. Second, the total tax, $1,500, is then multiplied by 1/10, the ratio of the property subject to tax to the entire estate (1/10 x $1,500 = $150, the amount of the tax due).

b. If property subject to the NJ inheritance tax is not specifically bequeathed, the tax is computed as follows:

i. First: the tax is computed on the entire estate as if the decedent were a resident of New Jersey and all of his or her property were located in New Jersey.

ii. Second, the amount of tax computed above is multiplied by the proportion (ratio) which the New Jersey real and tangible personal property bears to the entire estate (the "ratio tax").

iii. Example in statute: Mr. A, a California domiciliary, died intestate on July 3, 2016, leaving as his sole heir a nephew, Mr. B. Mr. A's estate consisted of the following property: real property with a value of $10,000 in New Jersey; $20,000 cash located in an Illinois bank; and $70,000 of real and personal property located in California. The New Jersey property is subject to the ratio tax and the tax on such transfer is computed as follows: First, a tax is computed on the value of the entire estate as if such estate were located in New Jersey (that is, $100,000 x 15%, the rate applicable for property passing to a Class "D" transferee or $15,000 tax). Second, the tax so computed is then multiplied by a fraction whose numerator is the value of the real or tangible personal property located in New Jersey and whose denominator is the value of all property of the estate, real or personal, tangible or intangible, wherever situated (that is, 10/100 x $15,000 = $1,500 tax, which is the ratio tax on the property passing to Mr. B). <u>Compare this result to the result in subparagraph 1.a, above, where the property was specifically bequeathed to the nephew rather than left as part of the residue</u>.

4. <u>Compromise Tax</u>. Applies when the tax on a transfer cannot be definitively determined due to multiple variables. *New Jersey Transfer Inheritance Tax Guide for Computation of the Compromise Tax*,

https://www.nj.gov/treasury/taxation/pdf/CompromiseInheritanceTaxGuide.pdf (last visited August 5, 2025).

a. Example: Decedent's Will gives spouse a life estate in the residue of Decedent's estate ($100,000), remainder to sibling, or if sibling does not survive, to two nephews (or the issue, *per stirpes*, of a deceased nephew). Assume spouse, sibling and nephews all survived decedent. To determine compromise tax:

   i. First, compute the value of the residue: $100,000
   ii. Second, determine the life estate factor for the spouse (based on spouse's age and gender (female, age 60): .69179
   iii. Third, multiply the value of the residue by the life estate factor ($100,000 x .69179): $69,179
   iv. Fourth, subtract number in iii. from value of the residue to determine value of remainder ($100,000 - $69,179) = $30,821
   v. Fifth, ascertain possible contingent taxes:
      a) All to brother: $5,821 (or $30,821 (value of total remainder)-$25,000 (amount of exemption for Class C beneficiaries)) x 11% (inheritance tax rate) = $640.31
      b) All to two nephews or their issue (who are all Class D beneficiaries): $30,821 (value of total remainder) x 15% (inheritance tax rate) = $4,623.15.
   vi. Sixth, determine the present value of the contingent tax (in this case, based on a 23-year life expectancy that results in a factor of .261797):
      a) All to brother: $640.31 x .261797 = $167.63
      b) All to nephews: $4,623.15 x .261797 = $1,210.33
   vii. Seventh, determine the probability of each contingency. Here, the spouse's life expectancy is longer than the brother's, making the contingency that the remainder will be paid to the nephews the highest probability. In this case, there is a 20% probability that the contingency will be paid to the brother and an 80% probability that the contingency will be paid to the nephews.
   viii. Eighth, determine compromise tax based on probabilities:
      a) Present value of contingent tax, all to brother x 20% = $167.63 x 20% = $33.53

      b) Present value of contingent tax, all to nephews x 80% = $1,210.33 x 80% = $968.26
      c) Add a) and b) above: $1,001.79

b. Factors such as the rights of any current beneficiary, including withdrawal rights, distribution standards and the number of current beneficiaries, have an impact on the factors and multipliers.

5. Treatment of Entities Owning Property Located in New Jersey.

a. An interest in a partnership owning New Jersey real property is considered intangible personal property, not subject to inheritance tax or waiver requirements, but only if the partnership is a bona fide partnership. Non-Resident Inheritance Tax Frequently Asked Questions, https://www.nj.gov/treasury/taxation/pdf/other_forms/inheritance/itnrfaq.pdf (last visited August 5, 2025). What constitutes a "bona fide" partnership is not delineated.

b. Stock in a corporation owning real property is considered intangible personal property. No inheritance tax is required for stock ownership. *Id*.

c. Cooperative apartments are treated as intangible personal property for New Jersey inheritance tax purposes, thus they are not subject to inheritance tax in the estate of a nonresident decedent. Instructions for IT-NR, Inheritance Tax Non-Resident Return (p. 4), https://www.nj.gov/treasury/taxation/pdf/other_forms/inheritance/itnrai.pdf (last visited August 5, 2025).

6. Tax Apportionment. A cautionary tale of tax apportionment.

a. The default rule under New Jersey law is that the inheritance tax is imposed on the recipient who bears the tax.

b. Many tax apportionment provisions override this default rule and direct that all "death taxes" be paid by the residue of the estate.

c. While directing death taxes to be paid out of the residue often results in a more equitable result among estate beneficiaries in the context of an inheritance tax, such direction comes with a price: an increase in the overall inheritance taxes due.

Chart Illustrating Difference in Tax Apportionment Under New Jersey Law

Hypothetical Pre-Inheritance Tax	$4,000,000
Number of total equal residuary beneficiaries	6
Number of residuary beneficiaries who are Inheritance Tax ("IT") beneficiaries	3
Applicable inheritance tax rate	15%
Scenario 1: Tax Allocated to IT Beneficiaries	
Amount of pre-inheritance tax residue to each beneficiary	$666,667
Tax on each IT beneficiary's share	$100,000
Total inheritance tax due	$300,000
Net amount to each IT beneficiary	$566,667
Net amount to each non-IT beneficiary	$666,667
Total amount to all beneficiaries	$3,700,000
Scenario 2: Inheritance Tax Paid Off Top of Residue	
Amount of pre-inheritance tax residue to each beneficiary	$666,667
Inheritance tax effectively imposed on each beneficiary's share (interrelated calculation)	$54,054
Total inheritance tax due	$324,324
Gross amount to each beneficiary	$720,721
Net amount to each beneficiary	$612,613
Total amount to all beneficiaries	$3,675,676

7. Note in the above chart, by paying the inheritance tax off the top rather than apportioning it only to those beneficiaries generating the tax, the overall tax increases by $24,324 on a relatively modest $4,000,000 estate.
8. Also note that when the tax is apportioned to the IT beneficiaries' shares, each IT beneficiary nets $566,667 and each non-IT beneficiary nets $666,667, a difference of $100,000 per IT beneficiary.
9. Conversely, when the tax is paid off the top by the residue, all IT and non-IT beneficiaries receive the same amount, $612,613.
10. Thus, consideration should be given to how the tax allocation clause is drafted if a New Jersey inheritance tax will be imposed, namely:
    a. Does the client want all beneficiaries treated equally, even though some beneficiaries' relationship to the client cause an inheritance tax and others do not, and the overall inheritance tax will be greater than if the tax is allocated only to the individuals whose relationship generates the tax?
    b. Does the client want the tax allocated only to those beneficiaries whose relationships cause the tax? In this case, the overall

c. inheritance tax will be lower but beneficiaries who would otherwise be treated the same will be treated differently based solely on their relationship to the client (in the above example, a difference of $100,000 per beneficiary).

V. <u>Income Tax Considerations</u>

<u>Planning with Entities</u>:

It is important to note that even when it is possible to reduce or even eliminate state estate and inheritance tax, the techniques used to effectuate the estate tax planning often come with a corresponding income tax consequence.

A. For example, assume client, who lives in Florida, owns a valuable house in East Hampton, New York. To avoid New York estate tax, client transfers the property into an LLC and gives 50% of the LLC to her spouse.

B. Pursuant to New York law (N.Y. Advisory Opinion No. TSB-A-10(1)M, described above), a multi-member LLC owning New York real estate will be treated as intangible personal property, thus not subject to New York estate tax. However, the Advisory Opinion implies that the LLC must have a "business purpose" to avoid New York estate tax.

C. To meet a "business purpose" test, client rents the residence out for part of the year. Now, pursuant to New York law, a nonresident individual is subject to New York income tax on New York source income, including her distributive share of partnership income, gain, loss and deduction. N.Y. Tax Law §631(1)(A).

D. New York source income is defined, in part, as:
   1. The ownership of any interest in real or tangible personal property in New York, including an interest in a partnership, LLC, corporation, S corporation, certain non-publicly traded C corporation with 100 or fewer shareholders; and
   2. Business, trade, profession or occupation carried on in New York.

E. As a result, the rental income would subject client to New York income tax.

F. Similarly, if a nonresident owns an interest in a partnership, LLC, S corporation or non-publicly traded C corporation with 100 or fewer shareholders that owns real property in New York and/or shares of stock in a New York cooperative apartment, the nonresident must income all or part of the gain or loss from the sale or exchange of an interest in the entity if the fair market value of all the real property/cooperative apartment shares is 50% of the fair market value of the assets the entity has owned for at least two years on the date of the sale or exchange.

1. In that case, the portion of the gain or loss included in New York source income is the total gain or loss reported for federal income tax purposes multiplied by a fraction, the numerator of which is the fair market value of the entity's real property/shares of cooperative apartment stock in New York and the denominator of which is the fair market value of all the assets that the entity owns.

G. The tax is imposed on sales or exchanges of interests in entities that are part of a tiered structure if any entity in the structure owns real property or cooperative shares in New York.

Planning with Trusts and Lifetime Gifting:

A. The use of properly structured irrevocable trusts, *e.g.*, QPRTs or SLATs, can remove part or all of the value of assets from a decedent's gross estate.
B. This could be helpful planning for clients who own real estate in states that impose an estate tax (but no gift tax), thereby minimizing the burden of estate tax upon death (even where lifetime exemption is used).
C. However, gifts have a carry-over income tax basis, and assets not included in the grantor's gross estate will not receive a step-up in basis upon death. Any subsequent sale of real property owned in trust, then, could have significant capital gains tax exposure.
D. Additionally, depending on how the trust is structured and administered, the compressed income tax rates for trusts could increase the amount of income tax due.
E. Accordingly, trust and gift planning to avoid the estate tax should also include an analysis of the income tax impact to beneficiaries, as the state estate tax rate, if the property is included in the decedent's estate, may be less than any applicable income tax imposed.

VI. Strategies for Out-of-State Domiciliaries to Reduce or Eliminate State Estate/Inheritance Tax and Traps for the Unwary

A. General Strategies.
   1. Always consult local counsel!! You don't know what you don't know, and coordinating with local counsel can prevent avoidable problems.
   2. Build flexibility into estate plans (for example, include disclaimer provisions and consider having disclaimed property pass to a marital trust rather than a traditional credit shelter trust to take advantage of state-only QTIPs).
   3. Make gifts of property outside of state of domicile to get out of that state's estate tax regime (for instance, create a SLAT for real and tangible personal property located outside of client's state of domicile).
      a. Caveats:
         i. This strategy may have limited utility in Connecticut.

ii. Be mindful of states that pull taxable gifts back into estates if gifts are made within some period of time (*e.g.*, three years) before death, if the claw back provisions apply to nonresidents.

4. Take advantage of state only-QTIPs when available.
5. Transfer property into an entity when doing so will convert such property into intangible personal property.
    a. This works optimally when the state of domicile does not impose its own estate tax.
    b. If the state of domicile imposes an estate tax, further analysis is advised before converting property.
6. Be mindful of tax apportionment clauses.

B. Illinois

1. Consider making gifts of Illinois sitused assets to remove them from the taxable estate, as Illinois does not have a gift tax. Although lifetime gifts do factor into the estate tax calculation (if there are still some Illinois sitused assets upon death), the tax impact is much less than if the decedent died owning the asset.
2. Consider transferring real property to an entity such as an LLC. Illinois statute appears to support the use of single member LLCs to convert real property interests to personal property.
3. Use a state-only QTIP election for property transferred to a surviving spouse to defer Illinois estate tax.

C. New York

1. Consider a contingent charitable bequest (appropriately referred to by some as a "Santa Clause") up to the amount that will be less than or equal to the tax due. For example, in the chart above, where the New York taxable estate was $7,200,000 (or $260,000 over the exemption), a bequest of $260,000 could be made to the client's favorite charity rather than paying a New York estate tax of $581,009.
    a. Sample bequest language: I give the largest sum, if any, that will reduce the New York estate tax otherwise payable as a result of my death, if any, by an amount greater than or equal to the amount of this bequest to such one or more organizations that shall be in existence and described in sections 170(c) and 2055(a) of the Code at the time of my death, in such proportions and amounts as my executor shall determine in his or her sole discretion. In making the computations necessary to determine the amount, if any, of this bequest, the final determinations for Estate Tax Purposes shall control and any elections properly made by my executor shall be taken into account. Notwithstanding the foregoing, the amount of

such bequest shall not exceed the amount required to reduce the New York estate tax to zero.

2. Transfer New York real and personal property to a multi-member LLC, even if child owns only 1%.
3. Nonresidents can gift New York sitused property and not have gifts clawed back into the estate if they die within three years of death.

D. New Jersey

1. Make bequest to inheritance tax beneficiaries from life insurance proceeds because life insurance proceeds are exempt from the inheritance tax unless they are payable to the decedent's estate.
2. Property being given to beneficiaries who trigger an inheritance tax should be made via specific bequest, not as part of the residue, if possible, because it impacts the calculation of the tax (see examples above).
3. Be careful when structuring trusts and other arrangements where there is a mix of beneficiaries, some of whom are exempt from the inheritance tax and some of whom are not.

E. Washington State

1. Transfer property to a single-member LLC. Query: Does this avoid death taxes entirely in states with state death taxes that treat single-member LLCs owning real property in that state as real property and not as intangible personal property?
2. Be careful not to engage in transactions that will jeopardize community property status if community property status is desired.

F. Connecticut

1. Avoiding Connecticut estate and gift tax is challenging!
2. Transfer Connecticut real and tangible personal property to an entity and then gift it before death.
3. If practical, consider selling Connecticut property shortly after the death of first spouse to get out of Connecticut estate tax at death of surviving spouse (even if such property is held in a trust for which a Connecticut QTIP election is made).