Estate Planning

# Six things you may not know about state estate taxes.

By Eva Stark, JD, LL.M.

## 1 You may live in a state with a state estate tax and/or inheritance tax regime.

Seventeen states and the District of Columbia currently impose some type of state-level estate tax or inheritance tax. To many individuals, the terms "estate tax" and "inheritance tax" may seem interchangeable as they both imply a death-related tax. However, a true estate tax is a tax on the right to pass property onto others and is usually payable by the decedent's estate. A true inheritance tax, in contrast, is a tax on a beneficiary's right to receive property and is usually imposed on the beneficiary.

Another key distinction between the two taxes is that the estate tax rate is generally the same regardless of who the recipient of the property may be.

An inheritance tax rate tends to vary depending on the relation of the beneficiary to the decedent.

Generally, transfers to "close relatives" such as children may escape inheritance taxes or are taxed at a preferential rate, while transfers to more "distant" relatives such as nieces and nephews or cousins may be subject to higher rates.

States that impose a state-level estate or inheritance tax:

- CT, HI, IL, ME, MD, MA, MN, NY, OR, RI, VT, WA, and the District of Columbia impose an estate tax.
- IA, KY, MD, and PA impose an inheritance tax.
- NE imposes a county inheritance tax.
- MD imposes both an estate tax and an inheritance tax.

## 2 You may be subject to state estate taxes even if you don't live in a state with a state estate tax regime.

In addition to imposing an estate tax on decedents domiciled in the state, states with an estate tax regime may impose an estate tax on the real property or tangible property of "nonresidents" that is located within the state.

An individual's domicile, not residency, generally determines whether the individual will be taxed as a "resident" or "nonresident" for state estate tax purposes.

Domicile generally refers to the place an individual views as his or her permanent home.

Other property with a connection to the state may be subject to state death taxes as well. For example, a state's estate tax laws may tax certain interests in entities which own realty in the state, interests in certain entities taxed as partnerships, or S corporations that own closely held businesses or farms in the state. Specific state law provisions regarding what may be taxable vary widely.

In addition to the surprise tax hit,in some states, nonresidents may only qualify for a reduced estate tax exemption amount as compared to residents of the state.

## 3 Your state estate tax exemption may be lower than the federal exemption.

While federal estate taxes affect only a small group of taxpayers, state estate taxes have significantly lower exemptions and are a concern for a much wider range of individuals.

The federal estate tax exemption amount for 2026 is $15 million per person/$30 million per married couple (adjusted annually for inflation).

In contrast, state estate tax exemption amounts can be as low as $1 million in Oregon, $2 million in Massachusetts, $3 million in Minnesota and Washington, or $4 million in Illinois.

While some states have indexed their estate tax exemption for inflation, others have not.

## 4 Your state estate tax rate may be lower than the federal rate.

The highest marginal federal estate tax rate is 40%, applicable to taxable amounts in excess of $1 million. State estate tax rates are typically much lower, generally in the 16% range, although Washington is as high as 35%. While not all states offer graduated rates, the highest tax bracket is often not reached until taxable amounts exceed $9-$10 million.

## 5 Your state estate tax exemption may not be portable, which may necessitate additional planning.

The federal estate tax exemption is "portable" — i.e., a decedent's unused federal estate tax exemption may be utilized by the surviving spouse in certain circumstances. If the decedent passes $1 million to his children upon death and all other assets pass to the surviving spouse, the surviving spouse might be able to utilize the decedent's remaining $14 million exemption (in 2026) in addition to his or her own exemption.

Portability may allow a surviving spouse to take advantage of his/her deceased spouse's unused exemption without traditional "A-B" trust planning. A-B trust planning involves the creation and funding of a "bypass trust" at the first death to utilize the decedent's exemption and channeling remaining assets to the survivor to defer estate taxes until the second death.

Many states that impose a state estate tax do not currently allow for portability of an individual's state estate tax exemption amount.

As a result, a bypass trust may be required to utilize the predeceased spouse's state exemption amount, or it may be wasted and the family's state estate taxes will unnecessarily increase at the survivor's death.

In some states, it may also be permissible to create a separate "state QTIP trust" which may defer state estate taxes until the surviving spouse's death and also utilize the decedent's exemption for federal estate tax purposes. (Note that some states do not permit a separate state-QTIP election).

## 6 Your state may not have a gift tax — even if it does have an estate tax.

For federal tax purposes, the gift and estate tax exemptions have been unified — with a combined lifetime exemption of $15 million (in 2026).

Lifetime gifts that utilize the exemption reduce the amount of exemption that remains available at death. This may not be the case with state estate taxes. (CT has a unified gift and estate tax regime.)

In several — but not all — states with a state estate or inheritance tax regime, it may be possible to reduce or avoid state estate or inheritance tax by making lifetime gifts. Those contemplating lifetime gifts should be mindful that rules may be in place that penalize the use of "deathbed" gifts to avoid the estate or inheritance tax and a look-back period may apply.

Additionally, certain states may take into account lifetime gifts for filing thresholds for estate taxes.

State estate, inheritance and gift tax laws vary greatly from state to state and change frequently.

As such, clients should always consult with a CPA, tax attorney, or estate planning attorney regarding specific state death taxes that may be applicable to them and state estate, gift, or inheritance tax planning.




### About the author:

**Eva Stark, JD, LL.M.,** joined The Nautilus Group in 2014 to assist with the development of estate and business plans and perform advanced tax research. Eva graduated *summa cum laude* with a BS in economics and finance from The University of Texas at Dallas. She earned her JD, with honors, from Southern Methodist University, where she served as a student attorney and chief counsel at the SMU Federal Taxpayers Clinic. She received her LL.M. in taxation from Georgetown University Law Center. Prior to joining Nautilus, Eva worked in private practice in tax controversy, business law, and litigation.



As a result of H.R.1 of the 119th Congress (commonly known as the One Big Beautiful Bill Act), the estate, gift and generation skipping tax exemptions amounts enacted under the Tax Cuts and Jobs Act of 2017 were made permanent. Effective January 1, 2026, the exemption amount rises to $15 million per person ($30 million for a married couple), with continued annual adjustments for inflation. For asset transfers in excess of the applicable exemption amount and otherwise subject to such taxes, the highest applicable federal tax rate remains at 40%. In addition, under different rates, rules, and exemption amounts (if any), there may be state and local estate, inheritance, or gift taxes that apply in your circumstances. Please consult your own tax or legal advisor for advice pertaining to your specific situation. This material includes a discussion of one or more tax related topics. This tax related discussion was prepared to assist in the promotion or marketing of the transactions or matters addressed in this material. It is not intended (and cannot be used by any taxpayer) for the purposes of avoiding any IRS penalties that may be imposed upon the taxpayer. These materials are prepared by The Nautilus Group®, a service of New York Life Insurance Company, and are made available to all Nautilus Group member agents and, as a courtesy, to select agents of New York Life Insurance Company. Nautilus, New York Life Insurance Company, its employees or agents are not in the business of providing tax, legal or accounting advice. Individuals should consult with their own tax, legal or accounting advisors before implementing any planning strategies. SMRU 5018435 Exp 11/30/2028