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Subject: **2010 Summary of Federal and State Estate Tax Relationship In Post-  
"Decoupled" World**

Prior AALU Washington Reports: 09-16; 07-21

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WASHINGTON REPORT.**

*In our Bulletins Nos. 09-16 and 07-21, we provided a description of state exemptions for what section 2011 of the Internal Revenue Code describes as “estate, inheritance, legacy or succession taxes” following the statutory “decoupling” of those exemptions from the Federal estate tax exemption. That Bulletin also included a summary of the then current status of the relevant law in each of the states. This Washington Report updates that information through June 8, 2010.*

*We thank the law firm of McGuire Woods LLP, of Charlottesville, Virginia, and one of its partners, Charles D. Fox IV, Esq., for permission to use the chart that is included here. The chart is maintained by Mr. Fox for the American College of Trust & Estate Counsel (ACTEC) Website on a non-exclusive basis and is updated regularly.*

Prior to 2001, taxpayers received a dollar for dollar credit (referred to in section 2011 as the “Credit For State Death Taxes”) against their federal estate tax liability for state estate (and, to some extent, inheritance) tax payments up to a certain amount.<sup>1</sup> These state estate taxes were commonly referred to as the “pick up” tax. Thirty-six states and the District of Columbia imposed only the pick up tax, which means that in those jurisdictions the state estate tax equaled the exact amount of the state credit. Fourteen

states had their own separate inheritance tax, a portion of which qualified as a pick up tax. The pick up taxes provided revenue to the states and was a form of revenue sharing with the federal government. Many states relied on this longstanding arrangement for a significant part of their revenue.

In June 2001, the Economic Growth and Tax Relief and Reconciliation Act (EGTRRA) was enacted, which first phased out, and then repealed, the Federal estate tax for the year 2010. Although the Act did not fully repeal the federal estate tax until 2010 (subject to further developments, to a full reemergence in 2011), the repeal of the federal credit that funded the pickup tax was effective in 2005. In lieu of that credit, a state death tax deduction was allowed for federal estate tax purposes beginning in the same year -- 2005. With the repeal of the Federal estate tax in 2010, the deduction for state death taxes also is repealed during that year. As a result of this phase out of the credit for "state death taxes," a number of states - in a move designed to preserve revenues - took legislative action to "decouple" those taxes from the Federal estate tax. In these decoupled states, the state exemption is frozen at some predetermined amount (often \$1 million). Most of the states that decoupled from the Federal estate tax retained their state death taxes after the Federal repeal.

Some states - Kansas, Indiana, Maine, Maryland, Massachusetts, New Jersey (if no federal return is filed), Oregon, Rhode Island, and Washington - allow a separate state-level QTIP election. The effect of this election is to minimize the state-level tax (on the difference between the Federal and State exemption amounts) on the first death.

However, many states do not allow a state-level QTIP election, and will impose a tax at the time of the first death even in situations where there is no Federal estate tax due.

The following chart, prepared by and used with the permission of McGuire Woods LLP and Charles D. Fox IV, Esq., summarizes the current state of the law in each of the 50 states.

<sup>1</sup> Proponents of permanent federal estate tax repeal have consistently used the "death tax" label as part of their advocacy efforts. The term has no statutory basis and does not accurately describe the statutorily labeled federal "estate tax"; however, the term "death tax" has, over time, managed to take on a negative meaning of its own. Unfortunately, the Revenue Code (in describing the various forms of state tax imposition at the time of death) uses the brief term "State Death Taxes" in the title of section 2011. Consequently, the chart prepared by Mr. Fox and included here in full accurately (in statutory terms) uses that term in tying its state tax analysis to the federal statute. In contrast, in another part of section 2011 the term "State Death Taxes" is given a more precise and detailed (but less facile and more cumbersome) description as "estate, inheritance, legacy or succession taxes paid to any State or the District of Columbia".

## STATE DEATH TAX CHART

**Through June 8, 2010**

State	Type of Tax	Effect of EGGTRRA on Pick-up Tax and Size of Gross Estate	Legislation Affecting State Death Tax	2010 State Death Tax Threshold
Alabama	None	<p>Tax was tied to federal state death tax credit. AL ST § 40-15-2.</p> <p>Although law is ambiguous, there is probably no state death tax and this is the position taken by the Alabama Department of Revenue</p>		

Alaska	None	Tax was tied to federal state death tax credit. AK ST § 43.3 1.011.		
Arizona	None	Tax was tied to federal state death tax credit. AZ ST §§ 42-4051; 42-4001(2), (12).  On May 8, 2006, Governor Napolitano signed SB 1170 which permanently repeals Arizona's state estate tax.		
Arkansas	None	Tax was tied to federal state death tax credit. AR ST § 26-59-103; 26-59-106; 26-59-109, as amended March, 2003.		
California	None	Tax was tied to federal state death tax credit. CA REV & TAX §§ 13302;		
Colorado	None	Tax was tied to federal state death tax credit. CO ST §§ 39-23.5-103; 39-23.5-102.		
Connecticut	Separate Estate Tax	As part of the two year budget which became law on September 8, 2009, the exemption for the separate estate and gift taxes was increased to \$3.5 million, effective January 1, 2010, the tax rates were reduced to a spread of 7.2% to 12%, and effective for estate taxes due on or after July 1, 2009, the Connecticut tax is due six months after the date of death. CT ST § 12-391.		3,500,000
Delaware	Pick-Up Only	Tax tied to federal state death tax credit in effect on January 1, 2001 for decedents dying after June 30, 2009. DE ST TI 30 §§ 1502(c).  The federal deduction for state death taxes is not taken into account in calculating the state tax. DE ST TI 30 §§ 1502(c)(2).		3,500,000
District of Columbia	Pick-Up Only	Tax frozen at federal state death tax credit in effect		1,000,000

		<p>on January 1, 2001.</p> <p>In 2003, tax imposed only on estates exceeding EGTRRA applicable exclusion amount.</p> <p>Thereafter, tax imposed on estates exceeding \$1 million.</p> <p>DC CODE §§ 47-3702; 47-3701; approved by Mayor on June 20, 2003; effective retroactively to death occurring on and after January 1, 2003.</p> <p>No separate state QTIP election.</p>		
Florida	None	<p>Tax was tied to federal state death tax credit.</p> <p>FL ST § 198.02; FL CONST. Art. VII, Sec. 5</p>	<p>HB 1197 was filed on February 22, 2010 to impose the Florida estate tax on non-residents only, effective July 1, 2010. It would apply to residents of states that tax the property of Florida residents in those states.</p> <p>A companion bill, SB 2620, was filed in the Florida Senate on February 26, 2010.</p>	
Georgia	None	<p>Tax was tied to federal state death tax credit.</p> <p>GA ST § 48-12-2.</p>		
Hawaii	None	<p>Tax was tied to federal state death tax credit.</p> <p>HI ST §§ 236D-3; 236D-2</p>	<p>The Hawaii Legislature on April 30, 2010 overrode the Governor's veto of HB 2866 to impose a Hawaii estate tax on the</p>	

			Hawaii assets of a non-resident, non US citizen. Apparently, a \$3.5 million exemption applies.	
Idaho	None	Tax was tied to federal state death tax credit. ID ST §§ 14-403; 14-402; 63-3004 (as amended Mar. 2002).		
Illinois	None as of January 1, 2010	<p>Pick-up tax was frozen at federal state death tax credit in effect on December 31, 2001 for decedents dying between January 1, 2003, and December 31, 2009.</p> <p>Tax was imposed only on estates exceeding EGTRRA applicable exclusion amount, except that for decedents dying in 2009, tax imposed on estates exceeding \$2 million (EGTRRA applicable exclusion amount for 2009 is \$3.5 million). For decedents dying after December 31, 2009, tax is tied to current federal state death tax credit. 35 ILCS 405/2; 35 ILCS 405/3.</p> <p>Illinois permits a separate state QTIP election, effective September 8, 2009.</p>	<p>SB 3694 was introduced on February 11, 2010 to reinstate the Illinois Estate Tax for 2010 as it existed in 2009 with a \$2 million exemption and a separate state QTIP election. It is unclear if the bill's effective date is January 1, 2010 or the date of enactment.</p>	
Indiana	Inheritance Tax	<p>Pick-up tax was tied to federal state death tax credit. IN ST §§ 6-4.1-11-2; 6-4.1-1-4.</p> <p>Indiana has not decoupled but has a separate inheritance tax and recognizes by administrative pronouncement a separate state QTIP election.</p>		

Iowa	Inheritance Tax	<p>Pick-up tax tied to federal state death tax credit. IA ST § 451.2; 451.13.</p> <p>Iowa has separate inheritance tax on transfers to remote relatives and third parties.</p>		
Kansas	None	<p>For decedents dying on or after January 1, 2007 and through December 31, 2009, Kansas had enacted a separate stand alone estate tax. KS ST § 79-15, 203</p>		
Kentucky	Inheritance Tax	<p>Pick-up tax was tied to federal state death tax credit.</p> <p>KT ST § 140.130. Kentucky has not decoupled but has a separate inheritance tax and recognizes by administrative pronouncement a separate state QTIP election.</p>		
Louisiana	None	<p>Pick-up tax was tied to federal state death tax credit.</p> <p>LA R. S. § § 47:2431; 47:2432; 47:2434.</p>		
Maine	Pick-up Only	<p>For decedents dying after December 31, 2002, pick-up tax is frozen at pre-EGTRRA federal state death tax credit, and imposed on estates exceeding applicable exclusion amount in effect on December 31, 2000 (including scheduled increases under pre-EGTRRA law) (L.D. 1319; March 27, 2003).</p> <p>For estates of decedents dying after December 31, 2002, Sec. 2058 deduction is ignored in computing Maine tax and a separate state QTIP election is permitted. M.R.S. Title 36, Sec. 4062.</p> <p>Maine also subjects real or tangible property</p>		1,000,000

		located in Maine that is transferred to a trust, limited liability company or other pass-through entity to tax in a non resident's estate. M.R.S. Title 36, Sec. 4064.		
Maryland	Pick-Up Plus Inheritance	<p>Tax frozen at pre-EGTRRA federal state death tax credit.</p> <p>Effective January 1, 2004, the threshold for Maryland tax is capped at \$1 million. Senate Bill 508 signed by Governor Erlich on May 26, 2004.</p> <p>Effective January 1, 2005, federal deduction for state death taxes under Sec. 2058 is ignored in computing Maryland estate tax, thus eliminating a circular computation. Senate Bill 508 signed by Governor Erlich on May 26, 2004. MD TAX GENERAL § 7-304; 7-309, amended May 2004.</p> <p>On May 2, 2006, Governor Erlich signed S.B. 2 which limits the amount of the federal credit used to calculate the Maryland estate tax to 16% of the amount by which the decedent's taxable estate exceeds \$1,000,000, unless the Section 2011 federal state death tax credit is then in effect. It also permits a state QTIP election. MD TAX GENERAL § 7-309</p>		1,000,000
Massachusetts	Pick-Up Only	<p>For decedents dying in 2002, pick-up tax is tied to federal state death tax credit. MA ST 65C §§ 2A.</p> <p>For decedents dying on or after January 1, 2003, pick-up tax is frozen at</p>		1,000,000

		<p>federal state death tax credit in effect on December 31, 2000. MA ST 65C §§ 2A(a), as amended July 2002.</p> <p>Tax imposed on estates exceeding applicable exclusion amount in effect on December 31, 2000 (including scheduled increases under pre-EGTRRA law), even if that amount is below EGTRRA applicable exclusion amount. See, Taxpayer Advisory Bulletin (Dec. 2002), DOR Directive 03-02, Mass. Guide to Estate Taxes (2003) and TIR 02-18 published by Mass. Dept. of Rev.</p> <p>Massachusetts Department of Revenue has issued directive, pursuant to which separate Massachusetts QTIP election can be made when applying state's new estate tax based upon pre-EGTRRA federal state death tax credit.</p>		
Michigan	None	Tax was tied to federal state death tax credit. MI ST §§ 205.232; 205.256		
Minnesota	Pick-Up Only	<p>Tax frozen at federal state death tax credit in effect on December 31, 2000, clarifying statute passed May 2002.</p> <p>Tax imposed on estates exceeding federal applicable exclusion amount in effect on December 31, 2000 (including scheduled increases under pre-EGTRRA law), even if that amount is below EGTRRA applicable exclusion amount.</p>		1,000,000

		MN ST §§ 291.005; 291.03; instructions for MS Estate Tax Return; MN Revenue Notice 02-16.  No separate state QTIP election permitted.		
Mississippi	None	Tax was tied to federal state death tax credit. MS ST § 27-9-5.  Although law is ambiguous, there is probably no state death tax.		
Missouri	None	Tax was tied to federal state death tax credit. MO ST §§ 145.011; 145.091.		
Montana	None	Tax was tied to federal state death tax credit. MT St § 72-16-904; 72-16-905.		
Nebraska	County Inheritance Tax	Nebraska through 2006 imposed a pick-up tax at the state level. Counties impose and collect a separate inheritance tax.  NEB REV ST. § 77-2101.01(1).		
Nevada	None	Tax was tied to federal state death tax credit. NV ST §§ 375A.025; 375A.100.		
New Hampshire	None	Pick-up tax was tied to federal state death tax credit. NH ST §§ 87:1; 87:7.		
New Jersey	Pick-Up Plus Inheritance	For decedents dying after December 31, 2002, pick-up tax frozen at federal state death tax credit in effect on December 31, 2001.  Pick-up tax imposed on estates exceeding federal applicable exclusion amount in effect December 31, 2001 (\$675,000), not including scheduled increases under pre-EGTRRA law, even though that amount is	S. 1242, introduced on February 9, 2010, would extend the New Jersey Estate Tax to the real and tangible property of nonresident decedent estates located in New Jersey.  S. 1279,	675,000

		<p>below the lowest EGTRRA applicable exclusion amount.</p> <p>The executor has the option of paying the above pick-up tax or a similar tax prescribed by the NJ Dir. Of Div. of Taxn. NJ St §§ 54:38-1; approved on July 1, 2002.</p> <p>In Oberhand v. Director, Div. of Tax, 193 N.J. 558(2008), the retroactive application of New Jersey's decoupled estate tax to the estate of a decedent dying prior to the enactment of the tax was declared "manifestly unjust", where the will included marital formula provisions.</p> <p>In Estate of Stevenson v. Director, 008300-07 (N.J.Tax 2-19-2008) the NJ Tax Court held that in calculating the New Jersey estate tax where a marital disposition was burdened with estate tax, creating an interrelated computation, the marital deduction must be reduced not only by the actual NJ estate tax, but also by the hypothetical federal estate tax that would have been payable if the decedent had died in 2001. A QTIP election for NJ estate tax purposes is only allowed to the extent permitted to reduce federal estate tax.</p>	<p>introduced on February 8, 2010, would repeal the New Jersey Estate Tax effective January 1, 2010.</p>	
New Mexico	None	<p>Tax was tied to federal state death tax credit. NM ST §§ 7-7-2; 7-7-3.</p>		
New York	Pick-Up Only	<p>Tax frozen at federal state death tax credit in effect on July 22, 1998. NY TAX § 951.</p> <p>In 2002 and 2003, tax imposed only on estates exceeding EGTRRA applicable exclusion</p>	<p>A9710 which was introduced in the New York State Assembly on January 19, 2010 would clarify that the New York</p>	1,000,000

		<p>amount. Thereafter, tax imposed on estates exceeding \$1 million. NY TAX §§ 952; 951; Instructions for NY Estate Tax Return.</p> <p>Governor signed S. 6060 in 2004 which applies New York Estate Tax on a <i>pro rata</i> basis to non-resident decedents with property subject to New York Estate Tax.</p> <p>On March 16, 2010, the New York Office of Tax Policy Analysis, Taxpayer Guidance Division issued a notice permitting a separate state QTIP election when no federal estate tax return is required to be filed such as in 2010 when there is no estate tax or when the value of the gross estate is too low to require the filing of a federal return. See TSB-M-10(1)M.</p> <p>Advisory Opinion (TSB-A-08(1)M (October 24, 2008) provides that an interest in an S Corporation owned by a non-resident and containing a condominium in New York is an intangible asset as long as the S Corporation has a real business purpose. If the S Corporation has no business purpose, it appears that New York would look through the S Corporation and subject the condominium to New York estate tax in the estate of the non-resident. There would likely be no business purpose if the sole reason for forming the S Corporation was to own assets.</p>	<p>threshold is \$1 million as of January 1, 2010. Currently, the law provides that the New York exemption is the tax on the unified credit on the date of a decedent's death not to exceed the tax on an estate of \$1 million. This raised the issue that since there was no federal unified credit this year, was there a New York tax.</p>	
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North Carolina	None as of January 1, 2010	<p>Tax was frozen at federal state death tax credit in effect on January 1, 2001.</p> <p>Tax was imposed only on estates exceeding EGTRRA applicable exclusion amount. On August 2, 2004, Governor Easley signed Session Law 04-170, which adds to the tax base the amount of the federal deduction for taxes paid under § 2058. This eliminated an interrelated calculation of the North Carolina estate tax. NC ST §§ 105-32.2; 105-32.1; 105-228.90.</p> <p>No separate state QTIP election permitted.</p>		
North Dakota	None	<p>Tax was tied to federal state death tax credit. ND ST § 57-37.1-04</p>		
Ohio	Separate State Tax	<p>Governor Taft signed the budget bill, 2005 HB 66, repealing the Ohio estate (sponge) tax prospectively and granting credit for it retroactively. This was effective June 30, 2005 and killed the sponge tax.</p> <p>Separate state estate tax rates may be found at OH ST § 5731.02.</p> <p>Ohio permits a separate QTIP for its state tax. OH ST § 5731.15(B)</p>		383,333
Oklahoma	None	<p>The separate estate tax was phased out as of January 1, 2010.</p>		
Oregon	Pick-Up Only	<p>Tax frozen at the federal state death tax credit in effect December 31, 2001, pursuant to HB3072, enacted on September 24, 2003.</p> <p>For 2002, tax imposed only on estates exceeding EGTRRA applicable</p>		1,000,000

		<p>exclusion amount. For decedents dying on or after January 1, 2003, tax imposed on estates exceeding applicable exclusion amount in effect on December 31, 2000 (including scheduled increases under pre-EGTRRA law) even if that amount is below EGTRRA applicable exclusion amount. The new law permits a separate QTIP election for state purposes. OR ST § 118.010; Oregon Inheritance Tax Return; Inheritance Tax Advisory as of 11/4/03 from OR Dept. of Revenue.</p> <p>On July 31, 2004, Oregon Department of Revenue adopted rule amendments with respect to the calculation of the tax.</p> <p>Oregon also permits a separate state marital election for a trust of which the surviving spouse is the sole discretionary beneficiary. This is referred to as special marital property. OR. ST. §§ 118.005 to 118.840</p>		
Pennsylvania	Inheritance	<p>Tax was tied to federal state death tax credit. PA ST T. 72 P.S. §9117 amended December 23, 2003.</p> <p>Pennsylvania had decoupled its pick-up tax in 2002, but has now recoupled retroactively. The recoupling does not affect the Pennsylvania inheritance tax which is independent of the federal state death tax credit.</p> <p>Pennsylvania recognizes a</p>		

		state QTIP election.		
Rhode Island	Pick-Up Only	<p>Tax frozen at federal state death tax credit in effect on January 1, 2001. RI ST § 44-22-1.1.</p> <p>Rhode Island recognized a separate state QTIP election in the State's Tax Division Ruling Request No. 2003-03.</p> <p>Rhode Island's Governor signed into law on June 30, 2009, effective for deaths occurring on or after January 1, 2010, an increase in the amount exempt from Rhode Island estate tax from \$675,000, to \$850,000, with annual adjustments beginning for deaths occurring on or after January 1, 2011 based on "the percentage of increase in the Consumer Price Index for all Urban Consumers (CPI-U). . . rounded up to the nearest five dollar (\$5.00) increment." HB 5983.</p>		850,000
South Carolina	None	Tax was tied to federal state death tax credit. SC ST §§ 12-16-510; 12-16-20 and 12-6-40, amended in 2002.		
South Dakota	None	Tax was tied to federal state death tax credit. SD ST §§ 10-40A-3; 10-40A-1 (as amended Feb. 2002).		
Tennessee	Inheritance	<p>Pick-up tax was tied to federal state death tax credit. TN ST §§ 67-8-202; 67-8-203.</p> <p>Tennessee has not decoupled, but has a separate inheritance tax and recognizes by administrative pronouncement a separate state QTIP election.</p>		

Texas	None	Tax was tied to federal state death tax credit. TX TAX §§ 211.001; 211.003; 211.051		
Utah	None	Tax was tied to federal state death tax credit. UT ST § 59-11-102; 59-11-103.		
Vermont	Vermont	Tax frozen at federal state death tax credit in effect on January 1, 2001. VT ST T. 32 §§ 7402(8), 7442a, 7475, amended on June 21, 2002.  <b>Threshold was limited to \$2,000,000 in 2009 when the legislature overrode the Governor's veto of H. 442.</b>  No separate state QTIP election permitted.		2,000,000
Virginia	Virginia	Tax frozen at federal state death tax credit in effect on January 1, 1978.  Tax imposed only on estates exceeding EGTRRA federal applicable exclusion amount. VA ST § § 58.1-901; 58.1-902.  The Virginia tax is repealed effective July 1, 2007.		
Washington	Separate Estate Tax	On February 3, 2005, Washington State Supreme Court unanimously held that Washington's state death tax was unconstitutional. Tax was tied to the current federal state death tax credit, thus reducing the tax for the years 2002 - 2004 and eliminating it for the years 2005 - 2010.  Hemphill v. State Department of Revenue 2005 WL 240940 (Wash. 2005).  In response to Hemphill, the Washington State Senate on April 19 and		2,000,000

		<p>the Washington House on April 22, 20, by narrow majorities, passed a stand-alone state estate tax with rates ranging from 10% to 19%, a \$1.5 million exemption in 2005 and \$2 million thereafter, and a deduction for farms for which a Sec. 2032A election could have been taken (regardless of whether the election is made). The Governor signed the legislation. WA ST §§ 83.100.040; 83.100.020.</p> <p>Washington voters defeated a referendum to repeal the Washington estate tax in the November 2006 elections.</p> <p>Washington permits a separate state QTIP election. WA ST §83.100.047.</p>		
West Virginia	None	<p>Tax was tied to federal state death tax credit. WV § 11-11-3.</p>		
Wisconsin	None	<p>As of January 1, 2008, tax is tied to current federal state death tax credit. WIST § 72.01(11m). Thus, there currently is no tax.</p> <p>For deaths occurring after September 30, 2002, and before January 1, 2008, tax was frozen at federal state death tax credit in effect on December 31, 2000 and was imposed on estates exceeding federal applicable exclusion amount in effect on December 31, 2000 (\$675,000), not including scheduled increases under pre-EGTRRA law, even though that amount is below the lowest EGTRRA applicable exclusion amount. Thereafter, tax imposed</p>		

		<p>only on estates exceeding EGTRRA federal applicable exclusion amount. WI ST §§ 72.01; 72.02, amended in 2001; WI Dept. of Revenue website.</p> <p>On April 15, 2004, the Wisconsin governor signed 2003 Wis. Act 258, which provides that Wisconsin will not impose an estate tax with respect to the intangible personal property of a non-resident decedent that has a taxable situs in Wisconsin even if the non-resident's state of domicile does not impose a death tax. Previously, Wisconsin would impose an estate tax with respect to the intangible personal property of a non-resident decedent that had a taxable situs in Wisconsin if the state of domicile of the non-resident had no state death tax.</p>		
Wyoming	None	<p>Tax tied to federal state death tax credit. WY ST §§ 39-19-103; 39-19-104.</p>		

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