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The State of the States: 2021

An update on key planning developments

State legislatures have been very busy on several trusts and estates-related fronts. Here's an update on some key planning developments across the country, through Nov. 30, 2021.

Electronic Wills and Execution

Even before the pandemic, in today's technologically driven society, courts have increasingly been called on to adjudicate the validity of electronic writings purporting to be wills.[1] While a controversial topic, jurisdictions had begun to advance their laws to enter the electronic world with COVID-19 accelerating the movement.

Nevada was the first state to enact legislation allowing electronic wills in 2001, which was amended in 2017.[2] Indiana passed legislation permitting electronic wills in 2018.[3] Arizona enacted legislation permitting electronic wills, effective on June 30, 2019.[4] Florida enacted an Electronic Documents Act in June 2019, which became effective Jan. 1, 2020, and includes electronic wills.[5]

In July 2019, the Uniform Law Commission promulgated the Uniform Electronic Wills Act (UEWA), which gives a testator the ability to electronically execute a will provided that the will exists in the electronic equivalent of text (no audio or video wills) and the requisite number of witnesses are physically present or, in jurisdictions that will allow it, virtually present for the signing of the electronic will. The UEWA also provides that electronic wills can be revoked the same way as traditional ones, including by a subsequent will or codicil or a revocatory act. Additionally, the UEWA requires that the self-proving affidavit be executed at the same time as an electronic will so the affidavit is part of the electronic will. An electronic will should be recognized as valid if it's valid under the law of the jurisdiction where the testator was physically located at the time of signing. The UEWA doesn't include requirements regarding the storage of electronic wills, although individual states can add requirements in their statutes.

Utah was the first state to enact the UEWA in August 2020.[6] Idaho,[7] Virginia[8] and the District of Columbia[9] introduced UEWA legislation in 2021. Here are the states that enacted electronic will legislation in 2021:

Colorado. This state's UEWA allows an individual to execute their will in the electronic presence of two or more individuals in different locations communicating in real time to the same extent as if the individuals were physically present in the same location.[10] Colorado's statute includes a broad definition for signing a will: An individual doesn't need to sign their name to authenticate the will; a tangible symbol with present intent to authenticate or adopt a will is sufficient.[11] An electronic will must be a readable record signed by the testator or another individual directed by the testator in the testator's name and physical presence. The will must be witnessed by at least two individuals in the physical or electronic presence of the testator or acknowledged by the testator in the physical or electronic presence of a

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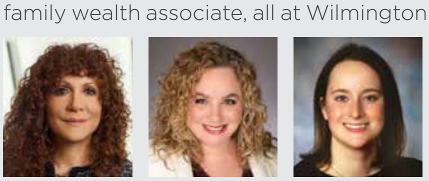

notary public.[12] Colorado's legislation applies to wills of individuals who die on or after July 2, 2021.[13]

Illinois. This state enacted the Electronic Wills and Remote Witnesses Act (EWRA), effective July 26, 2021.[14] Under the EWRA, an electronic will is created and maintained as a tamper-evident electronic record, meaning it contains a feature by which any change to the electronic record is displayed.[15] A valid electronic will must be executed by the testator, or by some individual in the testator's presence and at the testator's direction, and attested to in the testator's presence by two or more credible witnesses.[16] If the will consists of separate signature pages, attestation clauses or affidavits, the testator or an individual appointed by the testator has 10 business days from the attestation to attach all the documents together, creating a single document.[17]

North Dakota. This state's UEWA also doesn't require an individual to sign their name to authenticate the will; a tangible symbol with present intent to authenticate or adopt a will is sufficient.[18] An electronic will must be a readable record signed by the testator or another individual in the testator's name, in the testator's conscious presence and by the testator's direction. The will must be signed by at least two individuals within a reasonable time after witnessing or acknowledged by the testator before a notary public.[19] An electronic will may be simultaneously executed, attested and made self-proving by acknowledgment of the testator and affidavits of the witnesses.[20] North Dakota's statute applies to wills of individuals who die after July 31, 2021.

Washington. This state's UEWA allows an individual to execute their will in the electronic presence of two or more individuals in different locations communicating in real time to the same extent as if the individuals were physically present in the same location.[21] Under Washington's legislation, an individual doesn't need to sign their name to authenticate the will. An electronic symbol, an electronic sound or a process with present intent to authenticate or adopt a will is sufficient.[22] A "qualified custodian" must at all times maintain custody of the electronic will and not alter the electronic will in any way.[23] Washington's UEWA applies to wills of individuals who die on or after Jan. 1, 2022.[24]

During the pandemic, many jurisdictions issued executive orders authorizing remote witnessing and notarization. In 2021, many states, including Alabama,[25] Arkansas,[26] Illinois,[27] Kansas,[28] Maine,[29] New Hampshire,[30] New Jersey,[31] New Mexico,[32] Oregon[33] and Wyoming,[34] enacted legislation that permanently allows remote witnessing and notarization. Other states, including New York,[35] have introduced permanent legislation.

Telecommuting Tax Impact

One lasting effect of the pandemic will likely be the prevalence of working remotely. If someone lives in one state and telecommutes to another, what are the personal income tax implications?

> States have recently issued guidance regarding the tax impact of telecommuting.

Generally, an employee pays taxes in the jurisdiction where the employee physically performs services. Even prior to the pandemic, however, six states—Arkansas,[36] Connecticut,[37] Delaware,[38] Nebraska,[39] New York[40] and Pennsylvania[41]—imposed a so-called "convenience of employer rule." Pursuant to this rule, if employees work from home through the employer's necessity, the employee will be taxed in the employee's telecommuting location. If, however, the employee telecommutes for their own convenience, the employee's wages for those workdays will be classified as if the employee was working from the employer's physical office. With millions telecommuting during the pandemic, the convenience rule could tax employees as if physically working in the state of their employer's office, despite never setting foot in that location. Would these states provide relief from this outcome?

After issuing a legal opinion[42] justifying the convenience of employer rule that attracted much criticism, the Arkansas Department of Finance and Administration reversed its position on April 29, 2021.[43] As of Jan. 1, 2021, a nonresident will pay Arkansas income tax only on work performed while

physically located within the state.[44] Connecticut enacted legislation permitting its residents working remotely from Connecticut to take a credit against their Connecticut income tax for income tax paid to another state that imposed the convenience of employer rule.[45] The Connecticut Department of Revenue Services also issued a Taxpayer Services Special Bulletin informing nonresident employees telecommuting out of convenience or necessity from a state that has the convenience of employer rule that Connecticut won't collect income tax on income earned.[46] The new legislation and Special Bulletin apply to the taxable year 2020 only. Delaware's Division of Revenue issued guidance to taxpayers about how to treat days worked from a home located outside of Delaware in 2020 as days worked outside of Delaware.[47] The Nebraska Department of Revenue issued guidance that didn't require employers to change their employees' work location if they were telecommuting or temporarily relocated to another state for income tax withholding purposes due to the COVID-19 pandemic.[48] Beginning July 30, 2021, employers must update the locations for employees working in a different state to comply with Nebraska's income tax withholding requirements.[49] New York[50] and Pennsylvania[51] didn't consider telecommuting a change to the sourcing of an employee's compensation.

It will be prudent for taxpayers to keep careful track of days worked remotely, particularly since tax credits may not eliminate double taxation.

The convenience of employer rule, however, has come under attack. New Hampshire filed a Motion for Leave to File a Bill of Complaint against Massachusetts in the Supreme Court.[52] At issue was Massachusetts' temporary regulation subjecting New Hampshire residents working remotely from New Hampshire for Massachusetts' employers during the pandemic to Massachusetts income tax. New Hampshire, which doesn't have an income tax, challenged a state's constitutional authority to tax a nonresident who's telecommuting from their home state and neither lives nor physically works in the taxing state. At least 14 states[53]—ranging from New Jersey to Utah—issued briefs siding with New Hampshire.

On June 28, 2021, the Supreme Court denied New Hampshire's motion. Accordingly, the convenience of employer rule remains intact for now. However, there were two issues specific to the lawsuit that may have influenced the court's decision not to hear the case: (1) New Hampshire doesn't have a state income tax, so it suffered no loss of revenue by Massachusetts taxing its residents; and (2) Massachusetts' rule was implemented temporarily during the pandemic and expired in September 2021. States like New Jersey and Connecticut, for example, may be better positioned to challenge New York's convenience of employer rule: New York's rule is permanent, and those two states did reportedly lose billions of dollars by crediting their residents for taxes paid to New York while they worked remotely from their home states.

While the convenience of employer rule remains in place currently, it will be prudent for taxpayers to keep careful track of days worked remotely, particularly since tax credits may not eliminate double taxation.

Apart from states that follow the convenience of employer rule, other states have recently issued guidance regarding the tax impact of telecommuting. Those states include:

Kansas. This state enacted legislation giving employers the option to continue to withhold income taxes based on the state of the employee's primary work location and not based on the state where the employee is temporarily teleworking from Jan. 1, 2021 through Dec. 31, 2022.[54]

Maine. According to guidance[55] from this state's Revenue Services for employers, Maine income tax withholding for wages paid through June 30, 2021 to a Maine resident suddenly teleworking in Maine due to a state's COVID-19 state of emergency will continue to be calculated as if the Maine resident were still working outside of Maine. Maine will

provide relief from double taxation by allowing a tax credit for income tax paid to other jurisdictions if another jurisdiction is asserting an income tax obligation for the same income despite the employee no longer physically working in that jurisdiction due to COVID-19.

Massachusetts. This state's Department of Revenue enacted a regulation[56] that applied to telecommuting work from March 10, 2020 to Sept. 13, 2021, when it expired. The regulation provided that nonresidents who were employed in Massachusetts prior to the COVID-19 state of emergency and worked outside of the state due to pandemic related circumstances would continue to have Massachusetts source income.

Missouri. This state enacted a rule from Jan. 21, 2021 to July 19, 2021, permitting an employer to withhold income tax from an employee's wages as if the employee was working at the primary work location, even though the employee wasn't working there during the COVID-19 relief period.[57]

New Jersey. As of Oct. 1, 2021, this state ended the COVID-19 temporary relief permitting employers to source income in accordance with the state where the employer is located for teleworking employees.[58] Employers should resume sourcing income based on where the service or employment is performed and withhold New Jersey gross income tax from such wages. Currently, New Jersey offers its residents a tax credit for taxes paid to other states, such as New York, so residents can avoid double taxation. In 2020, the New Jersey Senate passed a bill[59] that would direct the state treasurer to study the long-term fiscal impact of New York's taxation of New Jersey residents.

Rhode Island. Through Sept. 13, 2021, Rhode Island Division of Taxation emergency regulations didn't require out-of-state employers to withhold Rhode Island income taxes from their employees who were temporarily working within the state due to COVID-19.[60] Nonresident employees temporarily working outside of the state for a Rhode Island employer continued to have Rhode Island source income.[61]

South Carolina. The South Carolina Department of Revenue extended until Dec. 31, 2021 its guidance that the state won't impose an income tax withholding requirement on employees temporarily working remotely in South Carolina. An individual employed by a South Carolina employer temporarily working remotely from another state is still subject to South Carolina's income tax withholding.[62]

Vermont. The Vermont Department of Taxes issued guidance[63] that nonresidents temporarily living and working in the state have an obligation to pay Vermont income taxes on the income earned while they were living and performing work in Vermont. According to the guidance, this is the case even if they were in Vermont due to the COVID-19 pandemic and regardless of whether their employer is located inside or outside of the state.

> Because the SALT cap applies only to individuals, SALT assessed at the entity level should be fully deductible for federal tax purposes without regard to the individual SALT cap.

SALT Deduction Workaround

The Tax Cuts and Jobs Act of 2017 limited the deduction for state and local taxes (SALT) to $10,000. In response, some high tax states attempted to circumvent the SALT cap by developing state-operated charitable funds, essentially allowing individuals to make charitable donations to offset their real estate taxes. The Internal Revenue Service was quick to quash this workaround.[64] On Nov. 9, 2020, the IRS issued Notice 2020-75, allowing partnerships and S corporations (S corps) to elect annually to pay SALT through the entity in exchange for the partners or shareholders receiving a personal income tax credit equivalent to the pass-through entity (PTE) tax, in effect permitting the partnerships and S corps a workaround to the SALT limitation. In essence, because the SALT cap applies only to individuals, SALT assessed at the entity level should be fully deductible for federal tax purposes without regard to the individual SALT cap.

Prior to the IRS guidance, Connecticut[65] and Wisconsin[66] were the first states to enact PTE legislation effective for the 2018 tax year, followed by Louisiana,[67] Oklahoma[68] and Rhode Island[69] enacting legislation that was effective for the 2019 tax year. In response to the IRS guidance, Connecticut[70] and Rhode Island[71] have introduced legislative amendments, and Michigan,[72] North Carolina,[73] Ohio[74] and Pennsylvania[75] have introduced PTE tax legislation.

These states have recently enacted PTE legislation:

Alabama. For tax years beginning on or after Jan. 1, 2021, the Alabama Electing Pass-Through Entity Tax Act permits any Alabama S corp and Subchapter K entity to elect to pay the income tax due at the entity level, which is the highest individual income tax of 5%.[76] Electing PTEs must submit the appropriate form to the Department of Revenue within the tax year or before the 15th day of the third month the following tax year.

Arizona. For tax years beginning on or after Dec. 31, 2021, a partnership or S corp for federal income tax purposes may elect to pay a tax equal to 4.5% of its entire taxable income attributable to resident partners or shareholders and the portion of taxable income derived from sources within the state attributable to its nonresident partners or shareholders.[77]

Arkansas. For tax years beginning on or after Jan. 1, 2022, general and limited partnerships, limited liability companies (LLCs) and S corps may elect to be taxed as PTEs at a tax rate of 5.9%.[78] A nonresident individual who's a member of an electing PTE isn't required to file an individual income tax return if their only source of income was derived from the PTE for that taxable year.[79]

California. Effective for tax years from Jan. 1, 2021 to Dec. 31, 2025, S corps or entities taxed as partnerships may elect annually to pay a tax of 9.3% of the pro rata share or distributive share of the entity's partners, shareholders or members.[80] For 2022 to 2025, payment is due on or before June 15th of the taxable year of the election in the amount equal to or greater than 50% of the elective tax paid the prior year or $1,000, whichever is greater.[81]

Colorado. For tax years beginning Jan. 1, 2022 until the revocation of the federal SALT cap, S corps and partnerships may elect annually to be taxed at the entity level.[82] The PTE tax is 4.55% of each electing PTE owner's pro rata or distributive share of the PTE's Colorado-sourced income.[83] The entity claims any credit attributable to the electing PTE's activities in the taxable year, it doesn't pass the credit through to the electing PTE owner.[84] Electing PTE owners may take a deduction in the amount of their distributive share subject to the PTE tax.

Georgia. For tax years beginning on or after Jan. 1, 2022, S corps and electing partnerships may make an annual irrevocable election to be taxed at 5.75% at the entity level.[85] Georgia's PTE law doesn't allow partners and shareholders to take a credit for taxes paid under the new PTE tax.[86] Instead, when an eligible member's sole source of income is from an electing entity, the member doesn't have to report any income to Georgia's tax department.

Idaho. Effective for tax years beginning on or after Jan. 1, 2021, S corps and partnerships may elect to be taxed at 6.5% at the PTE level.[87] A nonresident individual member whose only source of income is through the entity isn't required to file an Idaho income tax return.[88] Each member of the PTE will receive a credit in an amount equal to their pro rata share of the tax paid by the PTE to Idaho or another state.[89]

Illinois. For taxable years ending on or after Dec. 31, 2021 and beginning prior to Jan. 1, 2026, a partnership or S corp may elect annually to be taxed at 4.95% as a PTE.[90] Nonresident partners or shareholders aren't required to file an income tax return if the only source of net income is from the electing entity.[91] Additionally, partners and shareholders may also take a credit for the tax paid by the PTE to another state with a substantially similar tax to Illinois.[92]

Louisiana. In 2019, this state enacted PTE legislation that allows S corps or entities taxed as partnerships to elect to be taxed as a PTE.[93] In 2021, the graduated tax rates were amended, effective for tax years beginning on or after Jan. 1, 2022.[94] The new rates for Louisiana taxable income of every entity that makes the election are 1.85% on the first $25,000, 3.5% on income between $25,000 and $100,000 and 4.25% on income above $100,000.[95]

Maryland. This state originally enacted PTE legislation in 2020.[96] In 2021, Maryland amended its PTE legislation,[97] retroactive to Jan. 1, 2020, requiring the entity to apply the tax to all members' distributive shares when electing to pay the PTE tax. For distributive shares of individual members, the tax rate is 8% and for entity members, it's 8.25%.[98] The member's credit for the PTE tax paid by the entity is added to the resident member's federal adjusted gross income (AGI) used to calculate their Maryland AGI.[99]

Massachusetts. Effective for taxable years beginning on or after Jan. 1, 2021 and until the federal SALT deduction limitation expires, S corps or partnerships may elect annually to be taxed at a rate of 5% as PTEs. A qualified member of an electing PTE is allowed a credit equal to 90% of their share of the PTE paid in the taxable year.[100] Further guidance is expected from the Commissioner to: (1) make the credit available to qualified members with income from eligible PTEs that have income from other eligible PTEs; (2) provide rules on the application of this new law to eligible trusts and estates; and (3) require estimated PTE tax payments by electing PTEs and their qualified members.[101]

Minnesota. For taxable years beginning after Dec. 31, 2020, a partnership, LLC or S corp may elect annually to file a return and pay the PTE tax.[102] The qualifying owner's tax credit and deduction is equal to the amount of the qualifying owner's income tax liability multiplied by the highest tax rate for individuals.[103] Nonresident qualifying owners with source income only from the qualifying entity don't have to file an individual Minnesota income tax return.[104]

New Jersey. Effective Jan. 1, 2020, this state permits PTEs (partnerships, S corps or LLCs) to elect annually to pay the owner's tax due on their distributive proceed shares.[105] In return, the owner(s) may claim a credit in the amount equal to the member's pro rata share of the tax for the amount paid by the PTE.[106] The tax imposed on the PTE ranges from 5.675% for amounts not over $250,000 to 10.9% for amounts over $5 million.[107]

New York. Effective for taxable years beginning on or after Jan. 1, 2021, partnerships, LLCs and S corps may elect annually to be taxed as a PTE.[108] The PTE tax due is calculated based on the personal income tax rates, which range from 6.85% for PTE taxable income less than $2 million up to 10.90% for PTE taxable income over $25 million.[109] Eligible taxpayers' PTE tax credit is equal to their direct share of the tax reported by the electing entity on the PTE tax return for that taxable year.[110]

About half the states in the country have some form of post-mortem right of publicity.

Oregon. For taxable years beginning on or after Jan. 1, 2022 and before Jan. 1, 2024, a partnership or S corp may elect annually to be taxed as a PTE.[111] The PTE tax rate imposed on the entity's total distributive proceeds is 9% on the first $250,000 and 9.9% on any distributive proceeds in excess of $250,000.[112] Each member of the PTE receives a credit against their taxes equal to the member's pro rata share of the tax paid for the tax year.[113]

South Carolina. For taxable years beginning after Dec. 31, 2020, a partnership and S corp may elect annually to be taxed as a PTE at a rate of 3%.[114] If a qualified owner has multiple electing PTEs, the owner may not reduce the tax at a rate that's higher than the 3% PTE tax rate.[115]

Post-Mortem Right of Publicity

The right of publicity (ROP) is an individual's right to control and profit from the commercial use of their name, image or likeness and to prevent others from exploiting their persona for commercial gain. The ROP is governed by state law, either through statute or common law. The post-mortem ROP extends the ROP beyond an individual's lifetime, typically prohibiting the unauthorized use of an individual's likeness for commercial purposes for some period after death, and allowing an executor or heir to enforce the protections provided by law.

In the high profile 2021 case of *Estate of Michael J. Jackson,*[116] the Tax Court directly addressed the taxability of image and likeness. The estate originally valued Jackson's image and likeness at $2,105 on his

estate tax return, the IRS' initial valuation on audit was about $434 million and, in a stunning victory for the estate, the court determined the value was around $4 million. This case, which involved California's post-mortem ROP statute,[117] put squarely in the spotlight the big dollars potentially at issue in valuing these intangible rights for estate tax purposes.

About half the states in the country have some form of post-mortem ROP.[118] States vary in terms of what triggers the post-mortem ROP. For example, Ohio,[119] Oklahoma[120] and Utah[121] require individuals to have exploited their publicity rights during lifetime. Alabama,[122] Arizona,[123] Arkansas,[124] Florida,[125] Georgia,[126] Hawaii,[127] Illinois[128] Indiana,[129] Nevada,[130] Tennessee[131] and Washington[132] don't require commercial exploitation during lifetime. California,[133] Kentucky,[134] New York,[135] Ohio,[136] Oklahoma,[137] Pennsylvania,[138] South Dakota[139] and Texas[140] require that the name, image or likeness have commercial value either during lifetime or at death. In Arizona,[141] Louisiana[142] and Maryland,[143] the post-mortem ROP statutes only apply to soldiers. New York was the most recent jurisdiction to enact a ROP statute, which includes post-mortem rights, effective for individuals who die domiciled in New York after May 29, 2021.

Regarding effective dates, the majority of state statutes apply the post-mortem ROP from the statute's date of enactment, whereas California,[144] Hawaii,[145] Indiana,[146] Oklahoma,[147] Texas[148] and Washington[149] apply retroactively. The number of years the post-mortem ROP protects an individual's persona after death varies widely among the states from 10 years in Tennessee and Washington,[150] to 20 years in Virginia,[151] to 30 years in Pennsylvania,[152] to 40 years in Florida and New York,[153] to 50 years in Arkansas, Illinois, Kentucky, Maryland, Nevada and Texas,[154] to 60 years in Ohio,[155] to 70 years in California, Hawaii and South Dakota[156] to 100 years in Indiana and Oklahoma,[157] with some states having protection for an uncertain duration.[158]

The nexus for using a state statute is typically that a decedent was domiciled or resident in that state at the time of death. However, Hawaii,[159] Indiana,[160] Nevada[161] and Washington[162] have broad statutes that provide protection as long as the exploitation occurs within the state, regardless if the individual was domiciled or a resident of the state.

Many state statutes specifically define the post-mortem ROP as a property right that's freely descendible and transferable by will, trust or other testamentary instrument. Accordingly, while the ROP provides heirs with important rights to enable them to profit from a deceased individual's persona, the value of the gross estate will include: "the value at the time of * * * death of all property, real or personal, tangible or intangible, wherever situated."[163] Consequently, if image and likeness is an intangible right that transfers at death, it will likely be included in the gross estate, making it prudent for practitioners to consider the post-mortem ROP in planning.

Restricting the ROP after death could potentially reduce its estate tax value, although at the cost of reducing its value to heirs. However, it's unclear what impact those restrictions actually will have on the valuation of post-mortem publicity rights because the gross estate ordinarily is determined without regard to restrictions imposed by a decedent's will. Transferring the ROP to a trust if a celebrity is early on in their career and the value is low may be one solution. Just as in the business planning context, dividing interests among multiple structures to minimize values may merit consideration, including selling or gifting publicity rights to irrevocable grantor trusts, which currently also have the advantage of the grantor shouldering the ongoing income tax liability.[164] To avoid an argument that a celebrity's continued control over the publicity rights is considered a right to determine who may possess or enjoy the income from the property (resulting in estate tax inclusion under Internal Revenue Code Section 2036(a)(2)), it will be prudent to appoint an independent trustee and to sell rather than gift the publicity rights. A bona fide sale (for legitimate and significant non-tax reasons) for adequate and full consideration won't be subject to IRC Section 2036.

Estate and Gift Tax

Despite proposals that threatened to reduce the federal exemption amount,[165] the current federal $11.7 million exemption is presently slated to remain in place until Dec. 31, 2025, when it will revert to $5 million, indexed for inflation.[166] There are 13 jurisdictions (Connecticut,[167] Hawaii,[168] Illinois,[169] Maine,[170] Maryland,[171] Massachusetts,[172] Minnesota,[173]

New York,[174] Oregon,[175] Rhode Island,[176] Vermont,[177] Washington[178] and D.C.[179]) that impose an estate tax, and six (Iowa,[180] Kentucky,[181] Maryland,[182] Nebraska,[183] New Jersey[184] and Pennsylvania[185]) with an inheritance tax, including one state (Maryland) that imposes both sets of taxes. Here's the latest state-level activity:

Connecticut. The Connecticut estate and gift tax exemption is up from $5.1 million in 2020 to $7.1 million for 2021 and increases to $9.1 million for 2022.[186] For the year 2023 and beyond, Connecticut's exemption amounts will equal the federal exemption amounts.[187] There's a $15 million cap on an individual's estate and gift tax liability, meaning no further estate or gift tax will be owed once the cap is reached, which equates approximately to a $129 million estate.

Connecticut remains the only jurisdiction in the country with a true gift tax. Importantly for planning purposes, Connecticut doesn't impose a tax on gifts of tangible or real property located outside the state, so it's possible to make gifts with that type of out-of-state property without triggering a Connecticut gift tax.[188]

D.C. In response to the financial impact of the pandemic, D.C. adopted the Estate Tax Adjustment Amendment Act of 2020.[189] The new law dramatically reduces D.C.'s estate tax exemption by over $1.75 million to $4 million for individuals dying on or after Jan. 1, 2021.[190] Beginning Jan. 1, 2022, the new exemption amount increases annually by cost-of-living adjustments.

Iowa. On June 16, 2021, this state enacted legislation[191] to repeal Iowa's inheritance tax, which ranges from 0% to 15% depending on the relationship of the decedent to a beneficiary. The tax will be reduced by 20% a year beginning with individuals dying in 2021 and culminating in full repeal for individuals dying on or after Jan. 1, 2025.

Maine. Maine's exclusion amount is $5.6 million, indexed for inflation for individuals dying after Jan. 1, 2018.[192] For 2021, the estate tax exemption increased to $5.87 million.

New York. Effective for those dying on or after Jan. 1, 2019, New York's exemption amount is linked to the 2010 federal exemption amount of $5 million, indexed for inflation.[193] In 2021, New York's exemption amount was $5.93 million, up from $5.85 million in 2020. However, the New York estate tax regime maintains its built-in "cliff."[194] Only estates that are less than or equal to the exemption amount on the date of death will pay no tax; for those estates that are between 100% and 105% of the exemption amount, there's a rapid phase-out of the exemption; and those estates that exceed 105% of the exemption amount will lose the benefit of the exemption amount entirely and be subject to tax from dollar one.

While New York doesn't impose a current gift tax, the New York gross estate of a deceased resident is increased by the amount of any taxable gift made within three years of death, if the decedent was a New York resident at the time the gift was made and at the time of death.

Out-of-state real and tangible property won't trigger a New York estate tax for New York residents. Nonresidents who own real or tangible property located in New York won't owe any New York estate tax if the value of their New York situs property is below the New York exemption amount at the date of death.

Rhode Island. Pursuant to a law signed in June 2014, this state increased its estate tax exemption amount to $1.5 million in 2015, indexed for inflation.[195] For 2021, the estate tax exemption amount increased to $1,595,156.

Vermont. This state's exemption amount is $5 million for those dying on or after Jan. 1, 2021.[196] A flat 16% tax applies to amounts that exceed those levels.

Washington. The current exemption amount is $2 million, indexed for inflation, but there was no inflation adjustment for 2021, so this state's estate tax exemption remained at $2.193 million.[197]

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Endnotes

1. *See In re Estate of Javier Castro*, No. 2013ES00140 (Ct. Common Pleas, Lorain County, Prob. Div., Ohio, June 19, 2013) (will written with two witnesses on Samsung Galaxy Tablet) and *In re Estate of Horton*, 925 N.W.2d 207 (Mich. Ct. App. 2018) (typed electronic note on decedent's phone recognized as valid will).
2. Nev. Rev. Stat. Section 133.085.
3. Ind. Code Section 29-1-21-1.
4. Ariz. Rev. Stat. Section 14-2518.
5. Fla. Stat. Ann. Section 732.522.
6. Utah Code Ann. Section 75-2-1401.
7. ID. S.B. 1077 (2021).
8. VA. S.B. 1435 (2021).
9. D.C. L.B. 450 (2021).
10. Colo. Rev. Stat. Ann. Section 15-11-1302(2).
11. Colo. Rev. Stat. Ann. Section 15-11-1302(5)(a).
12. Colo. Rev. Stat. Ann. Section 15-11-1305.
13. Colo. Rev. Stat. Ann. Section 15-11-1311.
14. 755 Ill. Comp. Stat. Ann. 6/1-1.
15. 755 Ill. Comp. Stat. Ann. 6/1-20.
16. 755 Ill. Comp. Stat. Ann. 6/5-5(a).
17. 755 Ill. Comp. Stat. Ann. 6/15-10(b) and 6/15-10(e).
18. N.D. Cent. Code Ann. Section 30.1-37-01.
19. N.D. Cent. Code Ann. Section 30.1-37-04.
20. N.D. Cent. Code Ann. Section 30.1-37-06.
21. Wash. Rev. Code Ann. Section 11.02.005(5).
22. Wash. Rev. Code Ann. Section 11.12.410.
23. Wash. Rev. Code Ann. Section 11.12.470.
24. Wash. Rev. Code Ann. Section 11.12.491.
25. AL. S.B. 275 (2021).
26. AK. S.B. 340 (2021).
27. IL. S.B. 2664 (2021).
28. KS. S.B. 106 (2021).
29. ME. H.P. 1033 (2021).
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31. N.J. A.B. 4250 (2020).
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111. Or. Rev. Stat. Ann. Section Ch. 589, Section 2.
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116. *Estate of Michael J. Jackson, Deceased, John G. Branca, Co-Executor and John McClain, Co-Executor v. Comm'r,* T.C. Memo. 2021-48.
117. Cal. Civ. Code Section 3344.1.
118. Alabama, Arizona, Arkansas, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia and Washington.
119. Ohio Rev. Code Ann. Section 2741.01.
120. Okla. Stat. tit. 12, Section 1448.
121. *Nature's Way Prod., Inc. v. Nature-Pharma, Inc.*, 736 F. Supp. 245 (D. Utah 1990).
122. Ala. Code Section 6-5-771.
123. *In re Estate of Reynolds*, 235 Ariz. 80 (Ct. App. 2014).
124. Ark. Code Ann. Section 4-75-1103.
125. Fla. Stat. Ann. Section 540.08.
126. *Martin Luther King, Jr., Ctr. For Soc. Change, Inc. v. Am. Heritage Prod., Inc.*, 250 Ga. 135 (1982).
127. Hawaii Rev. Stat. Section 482P-1.
128. 765 Ill. Comp. Stat. 1075/5.
129. Ind. Code Section 32-36-1-6.
130. Nev. Rev. Stat. Section 597.790.
131. Tenn. Code Ann. Section 47-25-1103.
132. Wash. Rev. Code Section 63.60.020.
133. Cal. Civ. Code Section 3344.1.
134. Ky. Rev. Stat. Ann. Section 391.170.
135. N.Y. Civ. Rights Law Section 50-f.
136. Ohio Rev. Code Ann. Section 2741.01.
137. Okla. Stat. tit. 12, Section 1448.
138. 42 Pa. C.S.A. Section 8316.
139. S.D. Codified Laws Section 21-64-1.
140. Tex. Prop. Code Ann. Section 26.003.
141. Ariz. Rev. Stat. Ann. Section 12-761.
142. La. Stat. Ann. Section 14:102.21.
143. Md. Code Ann., Bus. Reg. Section 19-503.
144. Cal. Civ. Code Section 3344.1(h).
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147. Okla. Stat. tit. 12, Section 1448(H).
148. Tex. Prop. Code Ann. Section 26.003.
149. Wash. Rev. Code Section 63.60.010.
150. Tenn. Code Ann. Section 47-25-1104 and Wash. Rev. Code Section 63.60.040.
151. Va. Code Ann. Section 8.01-40.
152. 42 Pa. C.S.A. Section 8316.
153. Fla. Stat. Ann. Section 540.08 and N.Y. Civ. Rights Law Section 50-f(8).
154. Ark. Code Ann. Section 4-75-1107, 765 Ill. Comp. Stat. 1075/30, Ky. Rev. Stat. Ann. Section 391.170, Md. Code Ann., Bus. Reg. Section 19-503, Nev. Rev. Stat. Section 597.790 and Tex. Prop. Code Ann. Section 26.012.
155. Ohio Rev. Code Ann. Section 2741.02.
156. Cal. Civ. Code Section 3344.1(g), Hawaii Rev. Stat. Section 482P-4 and S.D. Codified Laws Section 21-64-2.
157. Ind. Code Section 32-36-1-8 and Okla. Stat. tit. 12, Section 1448(G).

158. *Reynolds*, s*upra* note 123; *Martin Luther King, Jr., supra* note 126; La. Stat. Ann. Section 14:102.21; *Herman Miller, Inc. v. Palazzetti Imports & Exports, Inc.*, 270 F.3d 298 (6th Cir. 2001); *Paisley Park Enterprises, Inc. v. Boxill*, 299 F. Supp.3d 1074 (D. Minn. 2017); Neb. Rev. St. Section 20-208; *Estate of Elvis Presley v. Russen*, 513 F. Supp. 1339 (D.N.J. 1981); *Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452 (2009); and *Nature's Way Prod., Inc. v. Nature-Pharma, Inc.*, 736 F. Supp. 245 (D. Utah 1990).
159. Hawaii Rev. Stat. Section 482P-1.
160. Ind. Code Section 32-36-1-1.
161. Nev. Rev. Stat. Section 597.780.
162. Wash. Rev. Code Section 63.60.020.
163. Internal Revenue Code Section 2031(a).
164. A proposal included in the Build Better Act (the Act), released on Sept. 13, 2021 by the House Ways and Means Committee, includes provisions that would make drastic changes to the grantor trust rules for grantor trusts created or funded on or after the Act's date of enactment, including causing the assets of a grantor trust to be included in the deemed owner's gross estate on death. While at the time of publication of this article, it seems unlikely that Congress will pass these provisions in the very near term, if changes to the grantor trust rules are enacted in the future, planning with non-grantor trusts will likely become key.
165. While recent proposed legislation suggested that the applicable exclusion amount could be decreased in 2022, and possibly to as little as $3.5 million, it's unclear at the time of publication of this article that Congress will pass any of these provisions. *See* For the 99.5 Percent Act, S. 994, 117th Congress Section 2(b)(1) and the Act, *ibid.*
166. IRC Section 2010(c)(3)(C).
167. CT. Gen. Stat. Section 12-391(g).
168. Haw. Rev. Stat. Section 236E-8.
169. 35 Ill. Comp. State. Ann. 405/3.
170. Me. Rev. Stat. tit. 36, Sections 4102 and 4119.
171. Md. Code Ann., Tax-Gen. Section 7-309(b)(3)(i).
172. Mass. Gen. Law Ann. Ch. 65C, Section 2A.
173. Minn. Stat. Ann. Section 291.016.
174. N.Y. Tax Law Section 952(c)(2)(B).
175. Or. Rev. Stat. Ann. Section 118.010.
176. R.I. Gen. Laws Section 44-22-1.1.
177. Vt. Stat. Section 7442a(b).
178. Wash. Rev. Code Section 83.100.020.
179. D.C. Code Ann. Section 47-3701.
180. Iowa Code Ann. Section 450.2.
181. Ky. Rev. Stat. Ann. Section 140.070.
182. Md. Code Ann., Tax-Gen. Section 7-202.
183. Neb. Rev. Stat. Ann. Sections 77-2004, 77-2005 and 77-2006.
184. N.J. Stat. Ann. Section 54:34 1.
185. 72 Pa. Stat. Ann. Section 9116.
186. CT. Gen. Stat. Section 12-391(g).
187. *Ibid.*
188. CT. Gen. Stat. Section 12-641.
189. 2020 D.C. Laws 23-149 Section 7191.
190. D.C. Code Ann. Section 47-3701.
191. IA. S.F. 619 (2021).
192. Me. Rev. Stat. tit. 36, Sections 4102 and 4119.
193. N.Y. Tax Law Section 952(c)(2)(B).
194. N.Y. Tax Law Section 952(c)(1).
195. R.I. Gen. Laws Section 44-22-1.1.
196. Vt. Stat. Section 7442a(b).
197. Wash. Rev. Code Section 83.100.020.