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Multistate Developments

Estate Tax

Repeal of Estate Taxes Examined, Future for State Regimes Discussed

As the saying goes, only two things are certain in life — death and taxes — and when those combine, things can get tricky. As more and more states repeal parts of their transfer tax regime, estate planning has become even more complicated than before.

On the state level, there are two types of estate taxes: so-called “pick-up” taxes, that are based on the now repealed federal tax credit, and stand-alone taxes.

States with pick-up taxes base their estate tax on the federal credit for state death taxes paid. As a result, these states are literally picking up revenue that would have otherwise gone to the federal government if there were no federal tax credit. However, the federal credit has been repealed since 2005, so states with pick-up taxes in effect no longer impose an estate tax on decedents’ estates.

In contrast, a stand-alone tax is an estate tax that is not tied to the federal credit against state death taxes. Instead, states with stand-alone taxes impose a tax on decedents’ estates and the amount is calculated based on the applicable statutory formula.

Pick-Up Tax Repeals. Many states have recently repealed their pick-up taxes. Georgia repealed its estate tax. Iowa repealed its estate tax and generation-skipping transfer tax. South Dakota repealed its inheritance and estate taxes. All of these repeals go into effect July 1 of this year.

“States are repealing their pick-up taxes because they’re not collecting any revenue, so states are getting these taxes off the books as an administrative matter,” said Thomas W. “TJ” Aldous, Jr., a partner at Williams Mullen.

Not all states are following suit though. Virginia, for example, has not repealed its pick-up tax. “The tax is still on the books, which affects other tax provisions in unexpected ways,” Aldous said. He declined to go into specific details about what other tax provisions are being affected due to attorney-client privilege, but he has seen it affect other taxes.

As for whether the repeal of state pick-up taxes is part of a larger trend, “[i]t may be in the future especially now that the [federal] estate tax is permanent,” Aldous said.

Political Considerations. Since many states have repealed their pick-up taxes, will they decide to enact a stand-alone tax in its place? “That’s a political question,” Aldous remarked.

Certain states, like South Dakota, won’t impose a stand-alone tax but other states might, Aldous said. And yet Iowa, which retained its inheritance tax, may impose a stand-alone tax because they are politically more willing to do it, Aldous explained.

Nonetheless, “states wanting to attract more businesses and individuals won’t impose a stand-alone tax because then the businesses and wealthy individuals would presumably leave the state,” Aldous said. For example, “New York recently changed its law because people, especially the wealthy, were leaving the state,” he added.

Some states are choosing to slowly phase out their stand-alone estate taxes by increasing exemption amounts, such as Tennessee, which increased its exemption from \$100,000 to \$1 million for decedents dying in 2014 and to \$2 million for decedents dying in 2015. Tennessee’s estate tax will ultimately be eliminated by 2016.

As part of its 2014-2015 budget plan, New York changed its exclusion amount, so that it will eventually conform to the federal exemption amount. Maryland also recently enacted legislation phasing in a higher exclusion amount. Both states are increasing their exemption during the next few years until it conforms to the federal exemption by 2019.

Federal Credit. The American Taxpayer Relief Act of 2012 permanently eliminated the federal credit for state death taxes paid. “It is not likely that the credit is coming back but, of course, no one knows what Congress will do,” Aldous said.

“When Congress eliminated the credit, it resparked the competition among the states to provide state estate tax ‘tax havens,’” Aldous added via e-mail. “Congress does not seem to be concerned about this competition currently. In fact, Congress may have anticipated that this would occur.”

“It is very likely that Congress needed to switch from a credit to a deduction to make the numbers work for a lowering of the federal estate tax rates,” Aldous said. “By removing the credit and permitting a deduction for state death taxes, the federal estate tax rate could be lowered while being offset with an increase by permitting a deduction rather than a credit. In addition, if states do not impose a state estate tax, estates cannot

take a deduction for state estate taxes so federal estate tax revenue increases.”

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□ For an overview of the estate tax in Georgia, see *Estates, Gifts, & Trusts Navigator*, at Georgia 1.1.1. For an overview of the estate tax in Iowa, see *Estates, Gifts, & Trusts Navigator*, at Iowa 1.1.1. For an

overview of the estate tax in Maryland, see *Estates, Gifts, & Trusts Navigator*, at Maryland 1.1.1. For an overview of the estate tax in New York, see *Estates, Gifts, & Trusts Navigator*, at New York 1.1.1. For an overview of the estate tax in South Dakota, see *Estates, Gifts, & Trusts Navigator*, at South Dakota 1.1.1. For an overview of the estate tax in Tennessee, see *Estates, Gifts, & Trusts Navigator*, at Tennessee 1.1.1. For an overview of the estate tax in Virginia, see *Estates, Gifts, & Trusts Navigator*, at Virginia 1.1.1.

State Estate Tax Chart

Jurisdiction	Estate Tax
Alabama	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
Alaska	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
Arizona	Arizona does not have an estate tax.
Arkansas	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
California	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
Colorado	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
Connecticut	Stand-alone tax.
Delaware	Stand-alone tax.
District of Columbia	Stand-alone tax.
Florida	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
Georgia	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005. Pick-up tax repealed as of July 1, 2014.
Hawaii	Stand-alone tax.
Idaho	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
Illinois	Stand-alone tax.
Indiana	Indiana does not have an estate tax.
Iowa	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005. Pick-up tax repealed as of July 1, 2014.
Kansas	Kansas does not have an estate tax.
Kentucky	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
Louisiana	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
Maine	Stand-alone tax.
Maryland	Stand-alone tax.
Massachusetts	Stand-alone tax.
Michigan	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
Minnesota	Stand-alone tax.
Mississippi	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
Missouri	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
Montana	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
Nebraska	Nebraska does not have an estate tax.
Nevada	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
New Hampshire	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
New Jersey	Stand-alone tax.
New Mexico	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
New York	Stand-alone tax.
New York City	New York City does not have an estate tax.
North Carolina	North Carolina does not have an estate tax.
North Dakota	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
Ohio	Ohio does not have an estate tax.
Oklahoma	Oklahoma does not have an estate tax.
Oregon	Stand-alone tax.
Pennsylvania	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
Rhode Island	Stand-alone tax.
South Carolina	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.

State Estate Tax Chart – Continued

South Dakota	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005. Pick-up tax repealed as of July 1, 2014.
Tennessee	Stand-alone tax. The tax is scheduled to be phased out by 2016.
Texas	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
Utah	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
Vermont	Stand-alone tax.
Virginia	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
Washington	Stand-alone tax.
West Virginia	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
Wisconsin	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.
Wyoming	No estate tax imposed, as state has pick-up tax based on federal credit that was phased out by 2005.