

TAB 7-H  
Estate Tax  
Distributed Aug. 19, 2002  
SOURCE: NCSL

# **STATE DEATH TAXES**

**EXCERPTS FROM**

**Recent Federal Tax Legislation  
And the States**

**July 2002 Update**

Alysoun McLaughlin  
Federal Budget and Taxation Policy Specialist

National Conference of State Legislatures  
William T. Pound, Executive Director

1560 Broadway, Suite 700  
Denver, CO 80202-5140  
303-830-2200

444 North Capitol Street, N.W., Suite 515  
Washington, DC 20001  
202-624-5400

<http://www.ncsl.org>

# SUMMARY

Since 1926, every state has collected a fixed share of revenue from the federal estate tax through a link to the "state death tax credit" (Section 2011 of the Internal Revenue Code). This credit is scheduled for a repeal in 2005 under the Economic Growth and Tax Relief Reconciliation Act of 2001. Thirty-five states plan to allow their estate tax to sunset with the federal credit, relinquishing revenue from the tax five years earlier than the federal government is doing so. Fifteen states will continue collecting their tax despite the repeal of the state death tax credit. (Twelve states impose a separate estate or inheritance tax that was not originally linked to the federal credit.) For the states that have reported an estimated cost for FY 2003, the projected cost is between \$1 million (Idaho) and \$367 million (California). California projects a cost of more than \$1.5 billion by FY 2005.

## ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT:

### REPEAL OF THE STATE DEATH TAX CREDIT

Since 1926, the federal government has permitted each state to collect a "pickup" on the federal tax, in effect permitting states to collect a share of a tax that would otherwise go to the federal government. The mechanism used to collect this pickup is the "credit for state death taxes" as described in Section 2011 of the Internal Revenue Code.

The Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16) increases the unified credit and gradually reduces the top rate for the estate tax until 2009, with full repeal occurring in 2010. The state death tax credit, however, is repealed in 2005. The accelerated repeal of the state death tax credit does not reduce the total amount of the estate tax; rather, it increases the percentage that is collected by the federal government rather than the state.

**Table 1. Schedule for Repeal of the Estate Tax and the State Death Tax Credit**

	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>Unified Credit</b>	\$1m	\$1m	\$1.5m	\$2m	\$2m	\$2m	\$2m	\$3.5m	Repeal
<b>Top Rate</b>	50%	49%	48%	47%	46%	45%	45%	45%	Repeal
<b>State Credit</b>	12%	8%	4%	Repeal					

The state death tax credit is replaced with a deduction for state taxes paid after December 31, 2004. Instead of providing a credit against the tax owed to the federal government, however, the new deduction reduces the federal taxable value of the estate by the amount of any estate, inheritance, legacy or succession tax imposed by a state. Second, it requires most states to enact new legislation to continue collecting their existing tax.

In some states - such as Alabama, Florida and Nevada - lawmakers find it almost impossible to continue collecting an estate tax because the pickup mechanism is part of the state constitution. In a few other states - such as Virginia - it would require an affirmative decision of the legislature to repeal their existing tax.

The federal estate tax repeal was enacted at a time when most states had already reduced or repealed their own inheritance taxes and were continuing to collect only the federal pickup. In 1989, 25 states imposed their own estate or inheritance taxes in addition to the pick-up of the federal credit. By 2000, only 15 states were still collecting revenue separate from the pick-up tax and several of them were in the process of repealing or reducing their separate tax. However, because the sudden elimination of the state death tax credit would exacerbate revenue losses states are already facing as a result of the declining economy, lawmakers in several states began considering options to continue collecting revenue from the estate tax after the federal repeal.

**Table 2. State Death Tax Credit:  
Status of State Legislation and the Cost to Conform**

State	Under current law, will the state continue to collect an estate tax that has traditionally been linked to the federal credit?		What is the projected cost?	Comments/ Status of Legislation
	YES	NO		
Alabama		✓	<b>FY 2003:</b> \$12 million <b>FY 2004:</b> \$25 million <b>FY 2005:</b> \$37 million <b>FY 2006:</b> \$50 million	The Alabama constitution prohibits an estate tax greater than the federal pickup.
Alaska		✓	<b>After 2004:</b> \$2 million	Automatically conforms.
Arizona		✓	<b>FY 2003:</b> \$18.83 million <b>FY 2004:</b> \$38.14 million <b>FY 2005:</b> \$57.69 million	H.B.2712 updates reference to provisions of federal law including the state death tax credit to March 9, 2002. Conference report passed the House and Senate May 23. Signed by the governor June 6.
Arkansas		✓		Current law imposes a transfer tax equal to the federal credit as of January 1, 1999. However, state law specifies that no tax shall apply if there is no federal estate tax. The Department of Revenue is interpreting the discrepancy to compel conformity and the phase-out is being assumed in legislative revenue estimates.
California		✓	<b>FY 2001-2:</b> \$77 million <b>FY 2002-3:</b> \$367 million <b>FY 2003-4:</b> \$725 million <b>FY 2004-5:</b> \$1.55 billion	Statutory initiative in 1982 repealed the inheritance and gift tax and imposed an estate tax equal only to the pick-up tax.
Colorado		✓	<b>FY 2002-3:</b> \$14.6 million <b>FY 2003-4:</b> \$36.6 million <b>FY 2004-5:</b> \$55 million	Automatically conforms.
Connecticut	(I)	✓	<b>FY 2003:</b> \$36 million <b>FY 2004:</b> \$87 million <b>FY 2005:</b> \$138 million <b>FY 2006:</b> \$192 million <b>FY 2007:</b> \$200 million	SB 611 would have freezed the state estate tax at the federal rate that applied on January 1, 2001. Language was not included in the final agreement on the budget (HB 6002).

**Table 2. State Death Tax Credit:  
Status of State Legislation and the Cost to Conform**

State	Under current law, will the state continue to collect an estate tax that has traditionally been linked to the federal credit?		What is the projected cost?	Comments/ Status of Legislation
	YES	NO		
Delaware		✓	<b>FY 2003:</b> \$7.61 million <b>FY 2004:</b> \$16.27 million <b>FY 2005:</b> \$25.48 million <b>FY 2006:</b> \$34.67 million	Automatically conforms.
District of Columbia	See comments.			Interpretations of current law differ. The budget approved by the council on May 7 clarifies that the District of Columbia will continue to collect the tax. The U.S. Congress reviews the district's budget as part of the annual appropriations process.
Florida		✓	<b>FY 2002-3:</b> \$150 million <b>FY 2003-4:</b> \$415.9 million <b>FY 2004-5:</b> \$662.7 million <b>FY 2005-6:</b> \$851.2 million <b>FY 2006 7:</b> \$939.8 million	The Florida constitution prohibits an estate tax greater than the federal pickup.
Georgia		✓	<b>FY 2003:</b> \$33 million <b>FY 2004:</b> \$37 million <b>FY 2005:</b> \$40 million <b>FY 2006:</b> \$45 million <b>FY 2007:</b> \$9 million <b>FY 2008:</b> \$9.5 million <b>FY 2009:</b> \$10 million <b>FY 2010:</b> \$10.5 million <b>FY 2011:</b> \$11 million	H.B. 1026 updated reference to the federal code to January 1, 2002. Passed by the House February 18; passed by the Senate March 7. Signed into law April 18.
Hawaii		✓		SB2824 updated reference to provisions of federal law including the state death tax credit to December 31, 2001. Conference report passed the House and Senate April 30. Signed by the governor on July 1. Act 223.
Idaho		✓	<b>FY 2003:</b> \$1 million	HB492 updated conformity to provisions of federal law

**Table 2. State Death Tax Credit:  
Status of State Legislation and the Cost to Conform**

State	Under current law, will the state continue to collect an estate tax that has traditionally been linked to the federal credit?		What is the projected cost?	Comments/ Status of Legislation
	YES	NO		
				including the state death tax credit to January 1, 2002. Passed the House Feb. 11; passed the Senate Feb. 21. Signed by the governor March 4. Session Law Chapter 59.
Illinois		✓	<b>FY 2003:</b> \$90 million <b>FY 2004:</b> \$216 million <b>FY 2005:</b> \$314 million <b>FY 2006:</b> \$410 million <b>FY 2007:</b> \$458 million	Automatically conforms.
Indiana	(I)	✓	<b>FY 2003:</b> \$7.4 million <b>FY 2004:</b> \$17.6 million <b>FY 2005:</b> \$21 million <b>FY 2006:</b> \$21.5 million <b>FY 2007:</b> \$21.4 million <b>FY 2008:</b> \$21.2 million	HB 1195 updated conformity to January 1, 2002. Passed the House Jan. 22; passed the Senate Feb. 14; conference report passed House and Senate March 14; signed by the governor March 28. Public Law 177.
Iowa	(I)	✓	<b>FY 2003:</b> \$15 million <b>FY 2004:</b> \$26 million <b>FY 2005:</b> \$38 million <b>FY 2006:</b> \$44 million <b>FY 2007:</b> \$46 million <b>FY 2008:</b> \$47 million <b>FY 2009:</b> \$48 million <b>FY 2010:</b> \$50 million <b>FY 2011:</b> \$45 million	House File 2116 updated conformity to January 1, 2002. Passed the House January 31; passed the Senate March 21; passed the House March 25; signed by the governor April 4.
Kansas	✓			Current law imposes a tax equal to the federal credit as of December 31, 1997.
Kentucky	(I)	✓		HB 457 updated references to provisions of federal law including the state death tax credit to December 31, 2001. Signed by the governor April 24.

**Table 2. State Death Tax Credit:  
Status of State Legislation and the Cost to Conform**

State	Under current law, will the state continue to collect an estate tax that has traditionally been linked to the federal credit?		What is the projected cost?	Comments/ Status of Legislation
	YES	NO		
Louisiana	(1)	✓		Automatically conforms.
Maine	✓		<b>FY 2003:</b> \$9.02 million <b>FY 2004:</b> \$16.67 million <b>FY 2005:</b> \$23.21 million <b>FY 2006:</b> \$30.51 million <b>FY 2007:</b> \$33.17 million <b>FY 2008:</b> \$36.14 million <b>FY 2009:</b> \$39.42 million <b>FY 2010:</b> \$43.95 million	Public Law 559 (LD 2080) requires taxpayers to remit the full amount under prior law to the state for deaths occurring in 2002.
Maryland	✓ (1)		<b>FY 2003:</b> \$27.2 million <b>FY 2004:</b> \$59.3 million <b>FY 2005:</b> \$83.6 million <b>FY 2006:</b> \$97.3 million <b>FY 2007:</b> \$100 million	SB 323 continues the Maryland estate tax in the same manner as if the federal credit had not been repealed or reduced. Passed the House April 1; passed the Senate April 2. Signed by the governor May 16.
Massachusetts		✓		Automatically conforms.
Michigan		✓	<b>FY 2001-2:</b> \$12 million <b>FY 2002-3:</b> \$67 million	Automatically conforms.
Minnesota	✓		<b>FY 2003:</b> \$16.5 million <b>FY 2004:</b> \$31.5 million <b>FY 2005:</b> \$45 million	Current law imposes a tax equal to the federal credit as of December 31, 2000.
Mississippi		✓		Automatically conforms.
Missouri		✓		Automatically conforms.
Montana		✓		Automatically conforms.
Nebraska	✓		<b>FY 2003:</b> \$5.21 million <b>FY 2004:</b> \$10.80 million <b>FY 2005:</b> \$16.75 million	Decoupling legislation, L.B. 905, passed the legislature April 16 and was signed by the governor on April 18.
Nevada		✓	<b>FY 2002-3:</b> \$9.5 million <b>FY 2003-4:</b> \$23.4 million <b>FY 2004-5:</b> \$35 million	The Nevada constitution prohibits an estate tax other than the federal pickup.



**Table 2. State Death Tax Credit:  
Status of State Legislation and the Cost to Conform**

State	Under current law, will the state continue to collect an estate tax that has traditionally been linked to the federal credit?		What is the projected cost?	Comments/ Status of Legislation
	YES	NO		
			<b>FY 2005-6:</b> \$47 million <b>FY 2006-7:</b> \$54 million <b>FY 2007-8:</b> \$57.8 million <b>FY 2008-9:</b> \$61.9 million <b>FY 2009-10:</b> \$66.2 million <b>FY 2010-11:</b> \$70.8 million	
New Hampshire	(I)	✓	<b>FY 2003:</b> \$5.2 million	Under current law, New Hampshire conforms to the Internal Revenue Code as of December 31, 2001.
New Jersey	✓ (I)		<b>After 2004:</b> \$240 million.	Assembly No. 2302 fixes the terms of the estate tax for decedents dying after December 31, 2001, to those that applied to decedents dying on December 31, 2001. Introduced May 9; passed the House June 20; passed the Senate June 30; signed into law on July 1 as P. L. 2002, c. 31.
New Mexico		✓	<b>FY 2002:</b> \$2.5 million <b>FY 2003:</b> \$8.33 million <b>FY 2004:</b> \$14.33 million <b>FY 2005:</b> \$20.59 million <b>FY 2006:</b> \$24.94 million	Automatically conforms.
New York	✓			Current law imposes a tax equal to the federal credit as of July 22, 1998.
North Carolina	✓			Current law imposes a tax equal to the federal credit as of January 1, 2001.
North Dakota		✓	All revenue goes to local subdivisions. The net effect has not been estimated.	
Ohio	(E)	✓		Automatically conforms.
Oklahoma	✓ (E)		No cost.	Current law imposes a separate estate tax that is equal to or greater than the federal credit. Elimination of the state death tax credit will not reduce state revenues.

**Table 2. State Death Tax Credit:  
Status of State Legislation and the Cost to Conform**

State	Under current law, will the state continue to collect an estate tax that has traditionally been linked to the federal credit?		What is the projected cost?	Comments/ Status of Legislation
	YES	NO		
Oregon	✓			Under the Oregon Constitution, definitions in the Oregon Revised Statutes are frozen to a date certain in the Internal Revenue Code, except for provisions defining taxable income, which may change as they are amended from time to time in the IRC.
Pennsylvania	(I)	✓		Automatically conforms.
Rhode Island	✓		FY 2002: \$5.63 million FY 2003: \$11.25 million FY 2004: \$16.88 million FY 2005: \$22.5 million	Rhode Island imposes a tax equal to the federal credit as of January 1, 2001.
South Carolina		✓	FY 2002-3: \$15.5 million	H. 4695 updated references to provisions of federal law including the state death tax credit to December 31, 2001. Signed by the governor April 22.
South Dakota		✓		Automatically conforms.
Tennessee	(I)	✓		Automatically conforms.
Texas		✓	FY 2003: \$81 million FY 2004: \$159 million FY 2005: \$195 million FY 2006: \$253 million	Automatically conforms.
Utah		✓	FY 2003: \$3 million FY 2004: \$8 million FY 2005: \$12 million FY 2006: \$16 million	Automatically conforms.
Vermont	✓		FY 2002: \$.4 million FY 2003: \$2.26 million FY 2004: \$4.42 million FY 2005: \$6.58 million FY 2006: \$8.49 million	Under Act 140, signed into law June 21, Vermont imposes a tax equal to the federal credit as of January 1, 2001. Any part of an estate related to a farming business is exempt.
Virginia	✓			Current law imposes a tax equal to the federal credit as of

**Table 2. State Death Tax Credit:  
Status of State Legislation and the Cost to Conform**

State	Under current law, will the state continue to collect an estate tax that has traditionally been linked to the federal credit?		What is the projected cost?	Comments/ Status of Legislation
	YES	NO		
				January 1, 1978.
Washington	✓		<b>FY 2003:</b> \$25 million <b>FY 2004:</b> \$52 million <b>FY 2005:</b> \$77 million <b>FY 2006:</b> \$102 million <b>FY 2007:</b> \$110 million	Current law imposes a tax equal to the federal credit as of January 1, 2001. Legislation to conform except for the state credit phase-out failed to pass. Legislation to fully conform was introduced but not considered.
West Virginia		✓	<b>FY 2002:</b> \$1 million <b>FY 2003:</b> \$5 million <b>FY 2004:</b> \$9 million <b>FY 2005:</b> \$13 million <b>FY 2006:</b> \$16 million	Conforming legislation, SB661, signed by the governor April 3. Prior law imposed a tax of no less than the federal credit as it existed on January 1, 1985.
Wisconsin	✓		<b>After 2007:</b> \$90 million.	2001 Act 16 applies the federal credit as of December 31, 2000 for deaths occurring between September 30, 2002 and January 1, 2008. After December 31, 2007, the tax is computed under federal law in effect on the date of death.
Wyoming		✓	<b>FY 2002:</b> \$1.9 million <b>FY 2003:</b> \$3.75 million <b>FY 2004:</b> \$5.625 million <b>FY 2005:</b> \$7.5 million	Automatically conforms.

(I) = State imposes a separate inheritance tax. These taxes are scheduled for elimination in Connecticut (2005); Louisiana (2004) and New Hampshire (2003).

(E) = State imposes a separate estate tax.