

## State Tax Apportionment Statutes

By: Trent S. Kiziah

State	Does state have tax apportionment statute?	Adopt Uniform Act?	Version of Uniform Act	Stat. Ref.	General Apportionment	Preresiduary Exempt?	Any P Exempt (other than preresiduary, marital & charitable)?	GST Direct Skip at Death	Statute specifically provides federal preemption?	QTIP Tax Rate
Alabama	Yes	Yes	2003	40-15B-1 ff	Equitable	No, except see next column	Following devise in will or revocable trust exempt: TPP devise exempt to extent not in excess of \$100,000; cash bequests to same person not in excess of \$25,000	Charged to skip person	No	Marginal Rate
Alaska	Yes	Yes	1958	13.16.610	Equitable	No	No	Not addressed	Silent	Prorata
Arizona	No	No	N/A		Unclear	Yes				
Arkansas	Yes	Yes	2003	28-54-101 ff	Equitable	No	No	Charged to skip person	Silent	Marginal Rate
California	Yes	No	N/A	Prob. 20110ff	Equitable	No	No	Not addressed	Yes, see f.n.1	Prorata
Colorado	Yes	Yes	1964, 1982	15-12-916	Equitable	No	No	Not addressed	Silent	Prorata

<b>CT</b>	Yes	No	N/A	12-401	Equitable	No	No	Not addressed	Silent	Prorata
<b>DC</b>	Yes	No	N/A	D.C. Code 47-3714	Equitable	No	No	Not addressed	No	Prorata
<b>Delaware</b>	Yes, see f.n.2	Yes	2003	Title 12, Chpt. 29	Equitable	No	No	Charged to skip person	No	Marginal Rate
<b>Florida</b>	Yes	No	N/A	733.817	Equitable	Yes	Yes, homestead	Charged to skip person	Yes, see f.n.3	Marginal Rate
<b>Georgia</b>	Yes	No	N/A	53-4-63	Unclear	Yes		Not addressed	Yes, see f.n.4	
<b>Hawaii</b>	Yes	Yes	1964, 1982	560: 3-916	Equitable	No	No	Not addressed	No	Prorata
<b>Idaho</b>	Yes	Yes	2003	15-3-1301 ff	Equitable	No	No	Charged to skip person	No	Marginal Rate
<b>Illinois</b>	No	No	N/A		Equitable	Yes				
<b>Indiana</b>	Yes	No	N/A	29-2-12-1 ff	Equitable	No	No	Not addressed	No	Prorata
<b>Iowa</b>	No	No	N/A		Residuary	Yes				

<b>Kansas</b>	Yes	Yes	1964	79-15, 126	Equitable	No	No	Not addressed	Yes	Prorata
<b>Kentucky</b>	No	No	N/A		Equitable	No				
<b>Louisiana</b>	Yes	No		9:2431 ff	Equitable	No	No	Not addressed	No	Prorata
<b>Maine</b>	Yes	Yes	1958	Title 18-A; 3-916	Equitable	No	No	Not addressed	No	Prorata
<b>Maryland</b>	Yes	Yes	1964	7-308	Equitable	No	No	Not addressed	No	Prorata
<b>Mass.</b>	Yes	Yes	1964, 1982	C 1908, 3-916	Equitable	No	No	Not addressed	Yes	Marginal Rate
<b>Michigan</b>	Yes	No	N/A	700.3920 ff	Equitable	Yes	No	Charged to skip person	Yes, see f.n.5	Marginal Rate
<b>Minnesota</b>	Yes	Yes	1958	524.3-916	Equitable	No	No	Charged to skip person	Yes as to GST Tax, see f.n. 6	Marginal Rate

<b>Mississippi</b>	Yes	Yes	1964	27-10-1 ff	Equitable	No	No	Not addressed	Yes, see f.n.7	Prorata
<b>Missouri</b>	No	No	N/A		Equitable	No	No	Not addressed	no	Prorata
<b>Montana</b>	Yes	Yes	1958	72-16-601 ff	Equitable	No	No	Not addressed	Yes, see f.n.8	Prorata
<b>Nebraska</b>	Yes	No	N/A	77-2108	Equitable	No	No	Charged to skip person	No	Prorata
<b>Nevada</b>	Yes	No	N/A	150.290 ff	Equitable	No	No	Not addressed	No	Prorata
<b>New Hampshire</b>	Yes	Yes	1958, 1964, 1982	88-A:1 ff	Equitable	No	No	Not addressed	Yes, see f.n.9	Prorata
<b>New Jersey</b>	Yes	No	N/A	3B-24-2	Equitable	Yes	No	Not addressed	No	Prorata
<b>New Mexico</b>	Yes	Yes	2003	45-9A-1 ff	Equitable	No	No	Charged to skip person	No	Marginal Rate

<b>New York</b>	Yes	No	N/A	EPTL 2-1.8	Equitable	No	No	Not addressed	No	Marginal Rate
<b>North Carolina</b>	Yes	Yes	1964, 1982	28A-27-1 ff	Equitable	No	No	Not addressed	Yes, see f. n. 10	Marginal Rate
<b>North Dakota</b>	Yes	Yes	1958	30.1-20-16	Equitable	No	No	Not addressed	No	Prorata
<b>Ohio</b>	Yes	No	N/A	2113.85 ff	Equitable	Yes in will and inter vivos trust	No	Not addressed	No	Marginal Rate
<b>Oklahoma</b>	No	No	N/A		Equitable	No				
<b>Oregon</b>	Yes	Yes	1958	116.303 ff	Equitable	No	No	Not addressed	No	Prorata
<b>PA</b>	Yes	No	N/A	Chpt. 37, 3701 ff	Equitable	Yes in will and inter vivos trust	No	Charged to skip person	No	Marginal Rate
<b>Rhode Island</b>	Yes	Yes	1964	44-23.1-1 ff	Equitable	No	No	Not addressed	No	Prorata

<b>South Carolina</b>	Yes	Yes	1958	62-3-916	Equitable	No	No	Not addressed	No	Prorata
<b>South Dakota</b>	Yes	Yes	1958, 1982	29A-3-916	Equitable	No	No	Not addressed	Yes, see f.n.11	Marginal Rate
<b>Tennessee</b>	Yes	No	N/A	30-2-614	Equitable	No	No	Not addressed	No	Prorata
<b>Texas</b>	Yes	No	N/A	PB. Code 322A	Equitable	No	No	Not addressed	Yes, see f.n. 12	Marginal Rate
<b>Utah</b>	Yes	Yes	1964	75-3-916	Equitable	No	No	Not addressed	No	Prorata
<b>Vermont</b>	Yes	Yes	1964	Title 32, 7301 ff	Equitable	No	No	Not addressed	No	Prorata
<b>Virginia</b>	Yes	No	N/A	64.1-161 ff	Equitable	No	No	Not addressed	No	Marginal Rate
<b>Washington</b>	Yes	Yes	2003	83.110A.010 ff	Equitable	Yes in will and inter vivos trust to limited extent	No	Charged to skip person	No	Marginal Rate

<b>West Virginia</b>	Yes	No	N/A	44-2-16a	Equitable	No	No	Not addressed	No	Prorata
<b>Wisconsin</b>	No	No	N/A		Residuary	Yes				
<b>Wyoming</b>	Yes	Yes	1958	2-10-101 ff	Equitable	No	No	Not addressed	No	Prorata

Footnotes:

- 1: CA Probate Code Sec. 20110(b)(2): "Where federal law directs otherwise. If federal law directs the manner of proration of the federal estate tax, the California estate tax shall be prorated the same manner." The Personal Representative has a duty to collect estate tax from persons charged with tax.
- 2: DL has adopted Uniform Act (2003) with provisions effective January 1, 2017. The spreadsheet sets forth the law as it will exist on January 1, 2017
- 3: FL: Sec. 733.817(1)(p) provides that recapture tax under 2032A or 2057 are to apportioned as provided in those code sections. Fl. Sec. 733.817(3)(b) apportions additional estate tax to 2044 property.
- 4: GA: Sec. 53-4-63(e): "Unless otherwise directed in the will, nothing in this Code section shall be deemed to limit any rights to reimbursement for federal estate taxes, generation-skipping transfer taxes; or any other taxes that may be available to personal representatives under federal law."
- 5: MI: Sec. 3920(1) "An estate, inheritance, or other death tax levied or assessed under the law of this or another state, political subdivision, or country or under a United States revenue act concerning property included in the gross estate under the law, but excluding taxes for which sources of payment are provided within sections 2206, 2207, 2207A, 2207B, and 2603 of the internal revenue code, ...shall be apportioned be apportioned in the following manner...."
- 6: MN: "The decedent's generation-skipping tax shall be apportioned as provided by federal law." Generally, decedent may otherwise direct by will or other governing instrument; however, statute states that the decedent's will or other written instrument must "specifically indicate an intent" to waive right of recovery under 2207A and 2207B. So as to these two recovery provision, greater specificity is required.
- 7: MS: "If the liabilities of persons interested in the estate as prescribed by this chapter differ from those which result under the Federal Estate Tax Law, the liabilities imposed by the federal law will control and the balance of this chapter shall apply as if the resulting liabilities had been prescribed herein."
- 8: MT: "If the liabilities of persons interested in the estate as prescribed by this chapter differ from those which result under the federal estate tax Law, the liabilities imposed by the federal law will control and the balance of this chapter shall apply as if the resulting liabilities had been prescribed herein."
- 9: NH: "If the liabilities of persons interested in the estate as prescribed by this chapter differ from those which result under the federal estate tax Law, the liabilities imposed by the federal law will control and the balance of this chapter shall apply as if the resulting liabilities had been prescribed herein."
- 10: NC: Decedent may otherwise direct by will; however, as to wills executed after October 1, 1986, a general direction that the tax is not to be apportioned shall not apply to taxes imposed by IRC 2041, 2042, and 2044. As to these three code sections, will must specifically state otherwise. If will does not do so, then apply 2206, 2207 and 2207A apply. Statute also provides at 28A-27-8:  
"If the liabilities of persons interested in the estate as prescribed by this chapter differ from those which result under the federal estate tax Law, the liabilities imposed by the federal law will control and the balance of this chapter shall apply as if the resulting liabilities had been prescribed herein."

11: SD: "If the liabilities of persons interested in the estate as prescribed by this chapter differ from those which result under the Federal Estate Tax Law, the liabilities imposed by the federal law will control and the balance of this chapter shall apply as if the resulting liabilities had been prescribed herein."

12: TX: "If federal law directs the apportionment of the federal estate tax, a similar state tax shall be apportioned in the same manner."

13: VA: 64.1-165 provides "None of the foregoing provisions of this article shall in any way impair the right or power of any person by will or by written instrument executed inter vivos to make directin for the payment of such estate taxes and to designate the fund or funds or property out of which such payment shall be made. 64.1-165.1 provides that "a general direction in a will, trust instrument or other document to pay all taxes imposed on account of a testator's or settlor's death or similar language shall not be construed to include the following taxes unless the testator or settlor expressly manifests an intention that such taxes be paid out of his estate, trust or other property by reference to the particular chapter, title or section of the Internal Revenue Code providing for such taxes or otherwise: 1. Additional tax imposed upon disposition or cessation ... under 2032A; 2. ... 2041; 3. ...2044; 4. ...2056A; 5. ... [GST] ...; 6. ...4980A...."

14: WV: "But it is expressly provided that the foregoing provisions of this section are subject to the following qualification, that none of such provisions shall in any way impair the right or power of any person by will or by written instrument executed inter vivos to make direction for the payment of such estate taxes, and to designate the fund or funds or property out of which such payment shall be made, and in every such case the provisions of such written instrument executed inter vivos shall be given effect to the same extent as if this section had not been executed."

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State	Marital Deduction	Charitable Deduction	Gift Tax Credit	PTP Credit	State Death Tax Deduction	Foreign Estate Tax Credit	Direct Otherwise?	Standard	Will Controls?	Able to direct otherwise by Revocable Trust?
<b>Alabama</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Inures to those paying foreign estate tax	Yes	"expressly and unambiguously"	Yes	Yes, to extent will does not control
<b>Alaska</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Ratably to all	Yes	"will provides otherwise"	Yes	Silent
<b>Arizona</b>										
<b>Arkansas</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Inures to those paying foreign estate tax	Yes	"expressly and unambiguously"	Yes	Yes, to extent will does not control
<b>California</b>	No tax apportioned	No tax apportioned	Silent	Silent	Inures to those paying state estate tax	Inures to those paying foreign estate tax	Yes	specifically	No	Yes
<b>Colorado</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Ratably to all	Yes	"otherwise provided in will"	Yes	Silent



<b>Kansas</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Ratably to all	Yes	"specifically"	No	Yes
<b>Kentucky</b>										
<b>Louisiana</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Ratably to all	Yes	"If the decedent has provided in his testament for the apportionment of the tax... the court shall apportion the tax as directed by the deceased."	Yes	Silent
<b>Maine</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Ratably to all	Yes	"otherwise provides"	Yes	Silent
<b>Maryland</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Ratably to all	Ratably to all	Yes	"otherwise provided in the will or other controlling instrument"	Silent	Yes
<b>Mass.</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Ratably to all	Yes	Generally, "otherwise provides." For will or other instrument of trust to call upon itself tax on QTIP, then must "specifically provides otherwise."	Silent	Yes
<b>Michigan</b>	No tax apportioned	No tax apportioned	Silent	Silent	Silent	Inures to those paying foreign estate tax	Yes	"unless the governing instrument directs otherwise"	Yes	Yes
<b>Minnesota</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Ratably to all	Yes	"Unless the will or other governing instrument otherwise provides" but see f.n. 6	Silent	Yes

<b>Mississippi</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Ratably to all	Yes	"will provides otherwise"	Yes	Silent
<b>Missouri</b>	No tax apportioned	No tax apportioned	Silent	Silent	Silent	Silent	Yes	Decedent provides otherwise		Yes
<b>Montana</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Ratably to all	Yes	"will or governing instrument otherwise provides"	Silent	Yes
<b>Nebraska</b>	No tax apportioned	No tax apportioned	Silent	Silent	Silent	Silent	Yes	"otherwise directed in the decedent's will or except in case when by written instrument executed inter vivos"	Silent	Yes
<b>Nevada</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Ratably to all	Yes	"otherwise directs in his or her will" "where by written instrument"	Silent	Yes
<b>New Hampshire</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Ratably to all	Yes	"will otherwise provides"	Yes	No
<b>New Jersey</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Silent	Silent	Yes	"otherwise directs in his will." Also, may direct by "nontestamentary instrument"	Silent	Yes
<b>New Mexico</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Inures to those paying foreign estate tax	Yes	"expressly and unambiguously"	Yes	Yes

<b>New York</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Silent	Silent	Yes	"otherwise provides" but as to 2044 must "specifically direct" by will	No	Yes
<b>North Carolina</b>	No tax apportioned	No tax apportioned	Inures to those paying gift tax	Inures to those giving rise to credit	Inures to those paying state estate tax	Inures to those paying foreign estate tax	Yes	"In the event the decedent's will provides a method of apportionment of the tax different from the method provided in subsection (a) above, the method described in the will shall control." See f.n. 10	Yes	No
<b>North Dakota</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Ratably to all	Yes	"will otherwise provides"	Yes	No
<b>Ohio</b>	No tax apportioned	No tax apportioned	Inures to those paying gift tax	Ratably to all	Inures to those paying state estate tax	Inures to those paying foreign estate tax	Yes	"will or another governing instrument otherwise provides." But as to QTIP, recovery provided unless will or governing instrmt "refers to [2044 or Ohio Stat. Sec.] or to QTIP	Silent	Yes
<b>Oklahoma</b>										
<b>Oregon</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Ratably to all	Yes	"will otherwise provides" "A mere testamentary direction to pay debts, charges, taxes or expenses of administration shall not be considered a direction against apportionment of estate taxes."	Yes	No
<b>PA</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Inures to those paying foreign estate tax	Yes	"may direct." As to GST direction must expressly refer to GST tax. As to 2044 recovery must expressly refer to right of recovery	Silent	Yes
<b>Rhode Island</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Ratably to all	Yes	"unless the will provides"	Yes	No

<b>South Carolina</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Ratably to all	Yes	"unless the will otherwise provides"	Yes	No
<b>South Dakota</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Ratably to all	Yes	"unless the will otherwise provides"	Yes	No
<b>Tennessee</b>	No tax apportioned	No tax apportioned	Silent	Silent	Silent	Silent	Yes	"testator otherwise directs in the testator's will"	Yes	No
<b>Texas</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Ratably to all	Yes	Statute does not apply "to the extent the decedent in a written inter vivos or testamentary instrument disposing of or creating an interest in property specifically directs the manner of apportionment"	Silent	Yes
<b>Utah</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Ratably to all	Yes	"Unless otherwise provided in the will or other dispositive instrument"	Silent	Yes
<b>Vermont</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Ratably to all	Yes	"unless the will otherwise provides"	Yes	No
<b>Virginia</b>	No tax apportioned	No tax apportioned	Silent	Silent	Silent	Silent	Yes	See f. n. 13	Silent	Yes
<b>Washington</b>	No tax apportioned	No tax apportioned	Ratably to all	Ratably to all	Inures to those paying state estate tax	Inures to those paying foreign estate tax	Yes	"To the extent that a provision of a decedent's will provides for the apportionment of an estate tax..."	Yes	Yes







## State Tax Apportionment Statutes

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State	Able to direct otherwise by other dispositive instrument?	Latter document control?	Able to impose on another instrumt more tax?
Alabama	Yes, to the extent will or revocable trust does not control.	Yes, as to revocable trust	Cannot apportion more tax on P over which had no power to transfer
Alaska	Silent	Silent	Silent
Arizona			
Arkansas	Yes, to the extent will or revocable trust does not control.	Yes, as to revocable trust	Cannot apportion more tax on P over which had no power to transfer
California	Yes	Silent	Silent
Colorado	Silent	Silent	Silent

<b>CT</b>	Yes	Silent	Possibly yes as to will, but as to trust only direct apportmnt inside trust
<b>DC</b>	Silent	Silent	Silent
<b>Delaware</b>	Yes	Yes, as to revocable trust	Cannot apportion more tax on P over which had no power to transfer
<b>Florida</b>	Yes	Yes	Yes, will may direct payment from revocable trust and to GPOA
<b>Georgia</b>	Silent	Silent	Silent
<b>Hawaii</b>	Silent	Silent	Silent
<b>Idaho</b>	Yes	Yes, as to revocable trust	Cannot apportion more tax on P over which had no power to transfer
<b>Illinois</b>			
<b>Indiana</b>	Yes	Silent	Silent
<b>Iowa</b>			

<b>Kansas</b>	Yes	Yes	Yes
<b>Kentucky</b>			
<b>Louisiana</b>	Silent	Silent	Silent
<b>Maine</b>	Silent	Silent	Silent
<b>Maryland</b>	Yes	Silent	Silent
<b>Mass.</b>	Silent	Silent	Silent
<b>Michigan</b>	Yes	Silent	Revocable Trust and other governing instrmt only controls P under that instrmt
<b>Minnesota</b>	Yes	Silent	

<b>Mississippi</b>	Silent	Silent	Silent
<b>Missouri</b>	Yes	Silent	No
<b>Montana</b>	Yes	Silent	Silent
<b>Nebraska</b>	Yes, inter vivos trust	Silent	Possibly yes as to will, but as to trust only direct apporment inside trust
<b>Nevada</b>	Yes, inter vivos trust	Silent	Possibly yes as to will, but as to trust only direct apporment inside trust
<b>New Hampshire</b>	No	Silent	Silent
<b>New Jersey</b>	Yes	Silent	Yes if "otherwise directs"
<b>New Mexico</b>	Yes	Yes, as to revocable trust	Cannot apportion more tax on P over which had no power to transfer

		Yes, see statute as to details	Yes if "otherwise directs"
<b>New York</b>	Yes		
<b>North Carolina</b>	No	N/A	Silent
<b>North Dakota</b>	No	N/A	Silent
<b>Ohio</b>	Yes	Silent	Silent
<b>Oklahoma</b>			
<b>Oregon</b>	No	No	Silent
<b>PA</b>	Yes	Silent	Silent
<b>Rhode Island</b>	No	Silent	Silent

<b>South Carolina</b>	No	Silent	Silent
<b>South Dakota</b>	No	Silent	Silent
<b>Tennessee</b>	No	Silent	Silent
<b>Texas</b>	Yes	Yes, see statute as to details	No
<b>Utah</b>	Yes	Silent	Silent
<b>Vermont</b>	No	Silent	Silent
<b>Virginia</b>	Yes	Silent	No
<b>Washington</b>	Yes	Yes, as to revocable trust	Cannot apportion more tax on P over which had no power to transfer

<b>West Virginia</b>	Yes	Silent	Silent
<b>Wisconsin</b>			
<b>Wyoming</b>	No	Silent	Silent