

CHAPTER 8

ESTATE TAXES

Editor's Note: West Virginia does not impose an estate tax or an inheritance tax on estates of persons dying after December 31, 2004. There is no local death tax.

¶ 801 Introduction

The West Virginia estate tax applied to decedents dying after June 30, 1985, and before January 1, 2005. For decedents dying prior to July 1, 1985, the West Virginia inheritance and transfer tax applied. These taxes applied to estates of decedents who were residents of this State at the time of their death and to estates of nonresident decedents who died owning property located in this State. The West Virginia State Tax Department administered both taxes.

Estate tax. The West Virginia estate tax was imposed only on those estates required to file a federal estate tax return that were also allowed to claim credit against their federal estate tax liability for payment of state death taxes. The amount of the West Virginia estate tax was limited to the amount of tax for which credit could be claimed on the federal estate tax return. The West Virginia tax was commonly referred to as an estate pick-up tax.

In 2001, Congress enacted *The Growth and Tax Relief Reconciliation Act of 2001*, Public Law 107-16. One section of this act phased out the credit then allowable against the federal estate tax for payment of state death taxes. Estates of persons dying after December 31, 2004, are not allowed any credit against their federal estate tax liabilities for payment of state death taxes, IRC § 2011(f), and such estates are not subject to the West Virginia estate tax. W. Va. Code § 11-11-39 provides that the West Virginia estate tax remains in effect until either (1) the tax is repealed by the Legislature, or (2) the federal government ceases to allow credit against its estate tax for payment of state death taxes.