

**The
American
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Trust
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ACTEC

STUDIES



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Study 12:

Apportionment of Death Taxes

Compiled by

Jeffrey N. Pennell
Atlanta, Georgia

Jurisdiction All Verified as of 6/11/2002	Apportion Estate Tax: General Rule	Apportion Estate Tax: Inside the Probate Estate	Apportion Estate Tax: Outside the Probate Estate	Equitable Apportionment: Dispositions that Generate Deduction Benefit From It	Apportion Local Tax Differences that Favor Certain Takers	Credits Benefit Recipients of Assets That Generate Them	Corpus Pays All Tax on Temporal Interests	Apportion GST Tax: General Rule	Apportion Fees and Expenses Similarly	Apportion Interest and Penalties As Tax Itself	Power to Pay Expense From Income
Alabama	Do Not Apportion ¹	Pro Rata Burden on Residue ²	§§2206-2207B Only ³	Marital: Yes; ⁴ Charitable: No Auth	No Auth	No Auth	No Auth	Apply §2603 ⁵			
Alaska ⁶	Apportion All ⁷	Yes ⁸	Yes ⁹	Yes ¹⁰	Yes ¹¹	Only §2011 ¹²	Yes ¹³	No Auth		Yes	
Arizona	Do Not Apportion ¹⁴	Burden on Residue ¹⁵	No ¹⁶	No Auth	No Auth	No Auth	No Auth	No Auth			
Arkansas	Apportion All ¹⁷	Yes ¹⁸	Yes ¹⁹	Marital: Yes; ²⁰ Charitable: No ²¹	No Auth	No Auth ²²	No Auth	No Auth			
California ²³	Apportion All ²⁴	Yes ²⁵	Yes ²⁶	Yes ²⁷	No Auth	All Except §2011 ²⁸	Federal Yes; Cal. Prorata ²⁹	Apply §2603 ³⁰		Yes ³¹	
Colorado ³²	Apportion All ³³	Yes ³⁴	Yes ³⁵	Yes ³⁶	Yes	Yes ³⁷	Yes ³⁸	No Auth		Yes	
Connecticut ³⁹	Apportion All ⁴⁰	Yes	Yes ⁴¹	Yes ⁴²	Yes ⁴³	No Auth	Yes ⁴⁴	Apply §2603 ⁴⁵			Yes ⁴⁶
Delaware ⁴⁷	Apportion All ⁴⁸	Yes ⁴⁹	Yes ⁵⁰	Yes ⁵¹	Yes ⁵²	No Auth	Yes ⁵³	No Auth			
D.C.	Apportion All ⁵⁴	Yes	Yes	Yes ⁵⁵	No Auth	No Auth	Yes ⁵⁶	No Auth			
Florida	Limited ⁵⁷	Burden on Residue ⁵⁸	Yes ⁵⁹	Marital: Yes; ⁶⁰ Charitable, No Auth	No Auth	Only §2014 ⁶¹	Yes ⁶²	No Auth		Yes ⁶³	
Georgia ⁶⁴	Do Not Apportion ⁶⁵	Burden on Residue ⁶⁶	Limited ⁶⁷	No ⁶⁸	No Auth	No Auth	No Auth	No Auth			
Hawaii ⁶⁹	Apportion All ⁷⁰	Yes ⁷¹	Yes ⁷²	Yes	Yes ⁷³	All except §§2013, 2014 ⁷⁴	Yes ⁷⁵	No Auth ⁷⁶		Yes	
Idaho ⁷⁷	Apportion All ⁷⁸	Yes ⁷⁹	Yes	Yes ⁸⁰	Yes	All except §§2013, 2014 ⁸¹	Yes ⁸²	No Auth		Yes ⁸³	

Jurisdiction All Verified as of 6/11/2002	Apportion Estate Tax: General Rule	Apportion Estate Tax: Inside the Probate Estate	Apportion Estate Tax: Outside the Probate Estate	Equitable Apportionment: Dispositions that Generate Deduction Benefit From It	Apportion Local Tax Differences that Favor Certain Takers	Credits Benefit Recipients of Assets That Generate Them	Corpus Pays All Tax on Temporal Interests	Apportionment GST Tax: General Rule	Apportionment Fees and Expenses Similarly	Apportionment Interest and Penalties As Tax Itself	Power to Pay Expense From Income
Illinois	Limited	Burden on Residue ⁸⁴	Yes ⁸⁵	Yes ⁸⁶	No Auth	No Auth	Yes	No Auth			
Indiana ⁸⁷	Apportion All ⁸⁸	Yes ⁸⁹	Yes	Yes ⁹⁰	No Auth	No Auth	No Auth ⁹¹	Apply §2603 ⁹²		Yes	
Iowa ⁹³	Do Not Apportion ⁹⁴	Burden on Residue ⁹⁵	No	Marital: Yes. ⁹⁶ Charitable: No	No Auth	No Auth	No Auth ⁹⁷	Apply 2603 ⁹⁸			Yes ⁹⁹
Kansas ¹⁰⁰	Do Not Apportion	Burden on Residue ¹⁰¹	No ¹⁰²	Marital: Yes, ¹⁰³ Charitable: No Auth	No Auth ¹⁰⁴	No Auth	No Auth	No Auth		Yes	Yes
Kentucky ¹⁰⁵	Apportion All ¹⁰⁶	Yes	No Auth ¹⁰⁷	Yes ¹⁰⁸	No Auth ¹⁰⁹	§2013 Only ¹¹⁰	Yes ¹¹¹	No Auth			
Louisiana ¹¹²	Apportion All ¹¹³	Yes	Yes	Yes ¹¹⁴	No Auth	Yes ¹¹⁵	Yes ¹¹⁶	No Auth	Yes ¹¹⁷	Yes ¹¹⁸	Yes ¹¹⁹
Maine ¹²⁰	Apportion All ¹²¹	Yes ¹²²	Yes	Yes ¹²³	Yes	All Except §§2013, 2014 ¹²⁴	Yes ¹²⁵	No Auth		Yes ¹²⁶	
Maryland ¹²⁷	Apportion All ¹²⁸	Yes ¹²⁹	Yes ¹³⁰	Yes ¹³¹	Yes ¹³²	All Except §§2013, 2014 ¹³³	Yes ¹³⁴	No Auth		Yes ¹³⁵	
Massachusetts ¹³⁶	Limited ¹³⁷	Burden on Residue ¹³⁸	Yes ¹³⁹	Yes ¹⁴⁰	No Auth	No Auth	Yes ¹⁴¹	No Auth ¹⁴²			
Michigan	Limited ¹⁴³	Burden on Residue ¹⁴⁴	Yes ¹⁴⁵	Yes ¹⁴⁶	Yes	Only §2014 ¹⁴⁷	Yes ¹⁴⁸	Apply §2603 ¹⁴⁹		Yes ¹⁵⁰	
Minnesota	Apportion All ¹⁵¹	Yes ¹⁵²	Yes ¹⁵³	Yes ¹⁵⁴	Yes ¹⁵⁵	All Except §§2013, 2014 ¹⁵⁶	Yes ¹⁵⁷	Apply §2603 ¹⁵⁸		Yes	
Mississippi ¹⁵⁹	Apportion All ¹⁶⁰	Yes	Yes	Yes ¹⁶¹	Yes	All Except §§2013, 2014 ¹⁶²	Yes ¹⁶³	No Auth		Yes ¹⁶⁴	

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Missouri ¹⁶⁵	Apportion All ¹⁶⁶	Yes ¹⁶⁷	Yes ¹⁶⁸	Yes ¹⁶⁹	No Auth	No Auth	No ¹⁷⁰	No Auth		Yes ¹⁷¹	
Montana ¹⁷²	Apportion All ¹⁷³	Yes ¹⁷⁴	Yes ¹⁷⁵	Yes ¹⁷⁶	Yes	All Except §§2013, 2014 ¹⁷⁷	Yes ¹⁷⁸	No Auth		Yes ¹⁷⁹	
Nebraska ¹⁸⁰	Apportion All ¹⁸¹	Yes ¹⁸²	Yes ¹⁸³	Yes ¹⁸⁴	Yes	All ¹⁸⁵	Yes ¹⁸⁶	Yes ¹⁸⁷		Yes ¹⁸⁸	
Nevada ¹⁸⁹	Apportion All ¹⁹⁰	Yes ¹⁹¹	Yes ¹⁹²	Yes ¹⁹³	No Auth	All Except §§2013, 2014 ¹⁹⁴	Yes ¹⁹⁵	No Auth	Yes ¹⁹⁶	Yes ¹⁹⁷	Yes ¹⁹⁸
New Hampshire	Apportion All ¹⁹⁹	Yes ²⁰⁰	Yes	Yes ²⁰¹	Yes	All Except §§2013, 2014 ²⁰²	Yes ²⁰³	No Auth			
New Jersey ²⁰⁴	Limited ²⁰⁵	Burden on Residue ²⁰⁶	Yes ²⁰⁷	Yes ²⁰⁸	Yes ²⁰⁹	All ²¹⁰	Yes ²¹¹	No Auth		Yes ²¹²	
New Mexico ²¹³	Apportion All ²¹⁴	Yes ²¹⁵	Yes ²¹⁶	Yes ²¹⁷	Yes	All Except §§2013, 2014 ²¹⁸	Yes ²¹⁹	Yes ²²⁰	Yes	Yes ²²¹	
New York	Apportion All ²²²	Yes ²²³	Yes ²²⁴	Yes ²²⁵	No Auth	No ²²⁶	Yes ²²⁷	Apply §2603 ²²⁸			
North Carolina ²²⁹	Apportion All ²³⁰	Yes	Yes ²³¹	Yes ²³²	Yes	Usually All ²³³	Yes ²³⁴	No Auth		Yes ²³⁵	
North Dakota ²³⁶	Apportion All ²³⁷	Yes	Yes	Yes	Yes	All Except §§2013, 2014 ²³⁸	Yes	No Auth		Yes ²³⁹	
Ohio ²⁴⁰	Limited ²⁴¹	Burden on Residue ²⁴²	Yes ²⁴³	Yes ²⁴⁴	No Auth	Yes ²⁴⁵	Yes ²⁴⁶	Apply §2603 ²⁴⁷		Yes ²⁴⁸	Yes ²⁴⁹
Oklahoma ²⁵⁰	Apportion All ²⁵¹	Yes ²⁵²	Yes	Yes ²⁵³							
Oregon ²⁵⁴	Apportion All ²⁵⁵	Yes ²⁵⁶	Yes	Yes ²⁵⁷	Yes	Yes ²⁵⁸	Yes ²⁵⁹	No Auth		Yes ²⁶⁰	

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Pennsylvania ²⁶¹	Limited ²⁶²	Burden on Residue ²⁶³	Yes ²⁶⁴	Yes ²⁶⁵	Yes ²⁶⁶	Only §§2011, 2014 ²⁶⁷	Yes ²⁶⁸	Apply §2603 ²⁶⁹		Yes ²⁷⁰	
Rhode Island	Apportion All ²⁷¹	Yes ²⁷²	Yes ²⁷³	Yes ²⁷⁴	Yes	All Except §§2013, 2014 ²⁷⁵	Yes ²⁷⁶	No Auth ²⁷⁷		Yes	
South Carolina ²⁷⁸	Apportion All ²⁷⁹	Yes	Yes	Yes	Yes	All Except §§2013, 2014	Yes	No Auth		Yes ²⁸⁰	Yes
South Dakota ²⁸¹	Apportion All ²⁸²	Yes ²⁸³	Yes ²⁸⁴	Yes ²⁸⁵	Yes	All Except §§2013, 2014 ²⁸⁶	Yes ²⁸⁷	No Auth		Yes ²⁸⁸	
Tennessee ²⁸⁹	Apportion All ²⁹⁰	Yes	Yes ²⁹¹	Yes ²⁹²	No Auth	No Auth	Yes ²⁹³	No Auth			Yes ²⁹⁴
Texas	Apportion All ²⁹⁵	Yes ²⁹⁶	Yes	Yes ²⁹⁷	Yes	All Except §§2013, 2014 ²⁹⁸	Yes ²⁹⁹	Apply §2603	Yes ³⁰⁰	Yes ³⁰¹	
Utah	Apportion All ³⁰²	Yes ³⁰³	Yes ³⁰⁴	Yes ³⁰⁵	Yes	All Except §§2013, 2014 ³⁰⁶	Yes ³⁰⁷	No Auth	Yes ³⁰⁸	Yes ³⁰⁹	
Vermont	Apportion All ³¹⁰	Yes ³¹¹	Yes ³¹²	Yes ³¹³	Yes	All Except §§2013, 2014 ³¹⁴	Yes ³¹⁵	No Auth		Yes	
Virginia	Apportion All ³¹⁶	Yes ³¹⁷	Yes ³¹⁸	Yes ³¹⁹	No Auth	No Auth	Yes ³²⁰	No Auth		Yes ³²¹	
Washington	Apportion All ³²²	Yes ³²³	Yes ³²⁴	Yes ³²⁵	Yes	All Except §§2013, 2014 ³²⁶	Yes ³²⁷	No Auth		Yes	
West Virginia ³²⁸	Apportion All ³²⁹	Yes ³³⁰	Yes	Yes	No Auth	No Auth	Yes ³³¹	No Auth			
Wisconsin ³³²	Do Not Apportion ³³³	Burden on Residue ³³⁴	No Auth	No Auth	No Auth	No Auth	No Auth ³³⁵	No Auth			
Wyoming	Apportion All ³³⁶	Yes ³³⁷	Yes ³³⁸	Yes ³³⁹	Yes	All Except §§2013, 2014 ³⁴⁰	Yes ³⁴¹	No Auth		Yes	

NOTES

*Unless otherwise indicated the data was compiled by Jeffrey N. Pennell

ALABAMA

1. Ala. Code §40-15-18. *Cleveland v. Compass Bank*, 652 So. 2d 1134 (Ala. 1994), determined that, except to the extent a federal right of reimbursement exists with respect to federal estate tax, the state burden on the residue rule applies, in that case involving the state estate tax liability attributable to qualified terminable interest property includible in the federal gross estate as to which federal estate tax reimbursement rights did exist but not state tax apportionment.
2. *Davis v. Davis*, 267 So. 2d 158 (Ala. 1972). Normal abatement rules impose on residue first, then general and finally specific bequests. *Grant v. United States*, 340 F. Supp. 182 (M.D. Ala. 1971). Enforcement powers in the personal representative are provided under Ala. Code are provided §§43-2-310, 43-2-441.
3. Life insurance proceeds deemed liable under the §2206 reimbursement right. *McAleer v. Jernigan*, 804 F.2d 1231 (11th Cir. 1986).
4. *Snodgrass v. United States*, 427 F.2d 150 (5th Cir. 1970), aff'g 308 F. Supp. 440 (N.D. Ala. 1968); *Grant v. United States*, 340 F. Supp. 182 (N.D. Ala. 1971); *First Nat'l Bank v. United States*, 328 F. Supp. 1339 (N.D. Ala. 1971) (such that outside apportionment would apply before invading marital bequest); *Robertson v. United States*, 281 F. Supp. 955 (N.D. Ala. 1968); *Moss v. Horton*, 544 So. 2d 898 (Ala. 1989); *Elliott v. Elliott*, 349 So. 2d 1092 (Ala. 1977); *Byars v. Mixon*, 299 So. 2d 259 (Ala. 1974); *Rowe v. Newman*, 276 So. 2d 412 (Ala. 1972); *Robertson v. United States*, 281 F. Supp. 955 (N.D. Ala. 1968).
5. Ala. Code §40-15A-4.

ALASKA

6. Reporter: **George Goerig, Anchorage**
7. Alaska Stat. §13.16.610 is the Uniform Estate Tax Apportionment Act.
8. Alaska Stat. §13.16.610(a), (p). Enforcement powers in the personal representative are provided under Alaska Stat. §13.16.610(f), (n). Inability to collect results in pro ration of deficiency among remaining beneficiaries. Alaska Stat. §13.16.610(o).
9. Alaska Stat. §13.16.610(a), (p).

10. Alaska Stat. §13.16.610(h), (i).
11. Alaska Stat. §13.16.610(h).
12. Alaska Stat. §13.16.610(h).
13. Alaska Stat. §13.16.610(m).

ARIZONA

14. *In re Estate of Mason*, 947 P.2d 886 (Ariz. App. 1997) (based on state legislature's failure to adopt Uniform Probate Code §3-916 when it adopted the balance of the Uniform Probate Code, which the court presumed to mean the legislature intended for the common law burden on the residue rule to apply); *In re Estate of Garcia*, 455 P.2d 269 (Ariz. App. 1969).
15. Normal abatement rules impose on residue first, then general and finally specific bequests. *Sanders v. Boyer*, 613 P.2d 1291 (Ariz. App. 1980). Ariz. Rev. Stat. §14-3902.
16. See note 14, which authority supercedes *Brewer v. Peterson*, 453 P.2d 966 (Ariz. App. 1969) and Att'y Gen'l Op. 67-8 (1967).

ARKANSAS

17. Ark. Code Ann. §26-59-115.
18. *Wright v. Union Nat'l Bank*, 819 S.W.2d 698 (Ark. 1991). Enforcement powers in the personal representative are provided under Ark. Code Ann. §§26-59-114, -116, and -117.
19. See *Risor v. Brown*, 446 S.W.2d 202 (Ark. 1969); *Terral v. Terral*, 205 S.W.2d 198 (Ark. 1947).
20. Ark. Code Ann. §26-59-115.
21. Ark. Code Ann. §26-59-108; *Commercial Nat'l Bank v. Arkansas Children's Hospital*, 511 S.W.2d 640 (Ark. 1974) (charitable bequests are exempt from state tax but federal tax is apportioned against charitable bequests unless will provides otherwise).
22. Cf. *Williamson v. Williamson*, 272 S.W.2d 72 (Ark. 1952) (addressing "exemptions and deductions" not allocated by statute).

CALIFORNIA

23. Reporter: **James A. Willett, Sacramento**
24. Cal. Prob. Code §20110 *et seq.* Tax includes interest and penalties.
25. Cal. Prob. Code §20111; *Estate of Buchhantz*, 260 P.2d 794 (Cal. App. 1953) (apportionment does not consider surviving spouse's share of community property in determining the proper pro ration). Enforcement powers in the personal representative are provided under Cal. Prob. Code §§20210-20225.
26. Cal. Prob. Code §20110(b)(2).
27. Cal. Prob. Code §20112(b)(2). See also Cal. Prob. Code §20114 (benefit of §2032A special use valuation is apportioned to qualified heir).
28. Cal. Prob. Code §20112(b)(1); Rev. & Tax. Code §13501 *et seq.*
29. Cal. Prob. Code §§16312, 20113; Rev. & Tax. Code §13955. See also *Estate of Libeu*, 89-1 U.S. Tax Cas. (CCH) ¶113,796 (Cal. App. 1988) (burden of §2032A(c)(5) recapture tax is imposed on income and remainder beneficiaries of trust holding special use property).
30. Cal. Prob. Code §20210.
31. Cal. Prob. Code §20112(c).

COLORADO

32. Reporter: **Samuel David Cheris, Denver**
33. Colo. Rev. Stat. §15-12-916 is the Uniform Estate Tax Apportionment Act.
34. Colo. Rev. Stat. §15-12-916(2). Enforcement powers in the personal representative are provided under Colo. Rev. Stat. §15-12-916(4). Inability to collect results in pro ration of deficiency among remaining beneficiaries. Colo. Rev. Stat. §15-12-916(7).
35. Colo. Rev. Stat. §§15-12-916(1)(a), (1)(d), (2).
36. Colo. Rev. Stat. §15-12-916(5)(b).
37. Colo. Rev. Stat. §15-12-916(5).
38. Colo. Rev. Stat. §15-12-916(6).

CONNECTICUT

39. Reporter: **Martin Wolman, Hartford**
40. Apportion federal tax under Conn. Gen. Stat. §12-401(a); apportion state tax under Conn. Gen. Stat. §12-376.
41. See *Morgan Guaranty Trust Co. v. Huntington*, 179 A.2d 604 (Conn. 1962) (power of appointment property); *Dolak v. Sullivan*, 144 A.2d 312 (Conn. 1958) (survivor annuities); *McLaughlin v. Green*, 69 A.2d 289 (Conn. 1949) (*inter vivos* trust).
42. Conn. Gen. Stat. §§12-347, -401(a); *New York Trust Co. v. Doubleday*, 128 A.2d 192 (Conn. 1956) ; *Cranley v. Schirmer*, 236 A.2d 332 (Conn. Super. 1967).
43. Conn. Gen. Stat. §12-376(a).
44. Conn. Gen. Stat. §§12-376, -401(a).
45. Conn. Gen. Stat. §12-390c(a)(1).
46. Conn. Gen. Stat. §45a-542d(2)(B) allows payment of interest on death taxes from postmortem income, but only to the extent doing so will not reduce a marital or charitable deduction. Otherwise payment is from principal under Conn. Gen. Stat. §45a-524y(a)(6).

DELAWARE

47. Reporter: **Joanna Reiver, Wilmington**
48. Del. Code tit. 12, §2901.
49. A personal representative need not distribute property to a legatee until all taxes are paid or adequate security is furnished. Del. Code tit. 12, §2904.
50. Del. Code tit. 12, §2903.
51. Del. Code tit. 12, §2901; cf. Del. Code tit. 12, 2901(b) (a transferee who takes property subject to a mortgage or security interest receives the benefit of any reduction in tax attributable to any reduction in value caused by the debt).
52. Prior to its repeal this was automatic by virtue of the operation of the state inheritance tax. Del. Code tit. 30, §§1301-53, 1322.
53. Del. Code tit. 12, §2901(b).

DISTRICT OF COLUMBIA

54. D.C. Code Ann. §47-3714. Enforcement powers in the personal representative are provided under D.C. Municipal Regs. ch. 37, §§3704.5, 3704.6.
55. *Rockler v. Sevaroid*, 691 A.2d 97 (D.C. App. 1997). See D.C. Code Ann. §47-3714 (a) (last clause), which appears to overrule *Riggs v. Del Mar*, 390 F.2d 466 (D.C. Cir. 1968) (holding that an elective share of a surviving spouse was computed after payment of tax—meaning that it was a net estate division).
56. D.C. Code Ann. §47-3714(b).

FLORIDA

57. Fla. Stat. §733.817(5).
58. Fla. Stat. §733.817(5)(a)1.
59. Fla. Stat. §§733.817(5)(b), 733.817(5)(f); *Keese v. Estate of Neely*, 498 So. 2d 1026 (Fla. Dist. App. 1986) (life insurance proceeds); *Pfeifer v. Varner*, 452 So. 2d 622 (Fla. Dist. App. 1984 (joint tenancy); cited by *Engelbrecht v. Earl*, 689 So. 2d 1169 (Fla. Dist. App. 1997).
60. Fla. Stat. §732.817(1)(d). See *In re Estate of Palmer*, 600 So. 2d 537 (Fla. 1992) (holding inapplicable Fla. Stat. §732.215, which provided at that time that any increase in estate, inheritance, or other death taxes caused by election of a surviving spouse's elective share shall be a burden on that share, stating that the election to take the statutory share instead of a QTIP trust did not increase taxes but only accelerated them from the estate of the surviving spouse to the estate of the deceased spouse and that, to the extent the elective share did not generate taxes because it qualified for the marital deduction, it should not bear the burden of any tax, citing the Fla. Stat. §732.817(2) equitable apportionment rule).
61. Fla. Stat. §§733.817(1)(f), (3)(b).
62. Fla. Stat. §733.817(3)(d).
63. Fla. Stat. §733.817(1)(n).

GEORGIA

64. Reporter: **A. Kimbrough Davis, Atlanta**
65. Ga. Code Ann. §§53-4-63.
66. Normal abatement rules impose on residue first, then general and finally specific bequests. Ga. Code Ann. §53-4-63.

67. See *Regents of the University System of Georgia v. Trust Company of Georgia*, 21 S.E.2d 691 (Ga. 1942) (outside apportionment with respect to power of appointment property); *In re Comer's Trust* (101 N.Y.S.2d 916 (N.Y. County 1950) (dicta stating that rule in Georgia was that *inter vivos* trust would bear a portion of taxes incurred).
68. Ga. Code Ann. §53-4-63 shows no favor, and Georgia does not even have an elective share for a surviving spouse.

HAWAII

69. Reporter: **Mervyn S. Gerson, Honolulu**
70. Haw. Rev. Stat. §560:3-916 is the Uniform Estate Tax Apportionment Act.
71. Haw. Rev. Stat. §560:3-916(b).
72. Haw. Rev. Stat. §560:3-916(e)(1).
73. Haw. Rev. Stat. §560:3-916(e)(2).
74. Haw. Rev. Stat. §560:3-916(f).
75. Haw. Rev. Stat. §560:3-916(f).
76. In the reporter's opinion statutory principles would appear to be inapplicable. See Haw. Rev. Stat. §560:3-916(a).

IDAHO

77. Reporter: **Stephen L. Pruss, Boise**
78. Idaho Code §15-3-916 is the Uniform Estate Tax Apportionment Act.
79. Idaho Code §§15-3-916(b), (e). Enforcement powers in the personal representative are provided under Idaho Code §15-3-916(d)(1). Tax that cannot be recovered is equitably apportioned among other interested parties. Idaho Code §15-3-916(g).
80. Idaho Code §15-3-916(e)(2).
81. Idaho Code §§15-3-916(e)(3), (e)(4).
82. Idaho Code §15-3-916(f).
83. Idaho Code §15-3-916(c)(2).

ILLINOIS

84. *In re Estate of Gowling*, 411 N.E.2d 266 (Ill. 1980); *Landmark Trust Co. v. Aitken*, 587 N.E.2d 1076 (Ill.

App. 1992); *In re Estate of Maddux*, 417 N.E.2d 266 (Ill. App. 1981).

85. Limited authority suggests a trend toward outside apportionment. "It is well settled in Illinois that in an intestate estate, the tax burden should be equitably apportioned between probate and nonprobate assets. Similarly, it is settled that in a testate estate, absent directions from the decedent, an apportionment of federal estate tax liability must be made." *Frederick v. Lewis*, 517 N.E.2d 742, 744 (Ill. App. 1988), citing *Roe v. Farrell*, 372 N.E.2d 662 (Ill. 1978) (joint tenancy property), and *In re Estate of Gowling*, 411 N.E.2d 266 (1980). See also *In re Estate of Pericles*, 641 N.E.2d 10 (Ill. App. 1994) (outside apportionment applied with respect to calculation of tax burden in the context of a statutory forced heir share to surviving spouse), and *In re Estate of Fender*, 422 N.E.2d 107 (Ill. App. 1981) (life insurance proceeds).
86. Compare *In re Estate of Gowling*, 411 N.E.2d 266 (Ill. 1980) (equitable apportionment applied with respect to bequest to surviving spouse), with *In re Estate of Pericles*, 641 N.E.2d 10 (Ill. App. 1994) (equitable apportionment apparently was not applied with respect to the statutory forced heir share of a surviving spouse, which was calculated after tax attributable to the Illinois property that was subject to that claim), and *In re Estate of Maddux*, 417 N.E. 2d 266 (Ill. App. 1981) (equitable apportionment denied for residuary charitable bequests), and *In re Estate of Grant*, 415 N.E.2d 416 (Ill. 1981) (equitable apportionment denied for statutory forced heir share to surviving spouse). Cf. *In re Estate of Martin*, 515 N.E.2d 1312 (Ill. App. 1987) (apportioning against estate beneficiaries who refused to consent to special use valuation the increase in tax attributable to their refusal, which effectively apportioned to those who did consent the savings attributable to their election).

INDIANA

87. Reporter: **Edwin W. Johnson, Evansville**
88. Ind. Code §§29-2-12; 6-4.1-11-1 – 6-4.1-11-5; 6-4.1-2-1 – 6-4.1-2-7.
89. Enforcement powers in the personal representative are provided under Ind. Code §29-2-12-6.
90. Ind. Code §§29-2-12-2; 6-4.1-3-1; 6-4.1-3-7.
91. Cf. Ind. Code §6-4.1-6-1.
92. See Ind. Code 6-4.1-11.5-8.

IOWA

93. Reporter: **J. Edward Power, Des Moines**
94. Iowa Code §§633.449; 633.436, 633.437; *In re Estate of DeVoss*, 474 N.W.2d 542 (Iowa 1991);. Cf. *Barlow v.*

Brubaker, 465 N.W.2d 276 (Iowa 1991) (in a bankrupt estate a tax payment provision in a will, calling for payment of the tax on probate property from the residue without apportionment was deemed adequate to override a state statute requiring payment of *all* taxes from the residue).

95. See Iowa Code §450.57 regarding state death tax payable from each beneficiary's share of the residue. Enforcement powers in the personal representative are provided under Iowa Code §§633.449, 450.57.
96. See Iowa Code §§633.436, 633.437, regarding spousal shares. But see *In re Estate of Thompson*, 512 N.W.2d 560 (Iowa 1994) (computation of the elective share is of the net estate after payment of estate tax, which is not the equitable apportionment result; §633.436 was distinguished because it deals with the order of abatement and not with the manner of computing the spousal entitlement). With respect to charitables, see *In re Estate of DeVoss*, 474 N.W.2d 542 (Iowa 1991) (abatment rules applied with respect to tax apportionment issue in which it appears that gifts made to charity ought to qualify for a deduction, indicating that equitable apportionment may not apply with respect to charitable bequests); *Zion Lutheran Church v. Estate of Lamp*, 149 N.W.2d 137 (Iowa 1967).
97. See Iowa Code §450.5 and *Jackman's Estate*, 122 N.W.2d 910 (Iowa 1963) to the effect that state inheritance tax is apportioned between the income and remainder interests.
98. Iowa Code §450A.5.
99. Iowa Code §633.352.

KANSAS

100. Reporter: **Willard B. Tompson, Wichita**
101. *Jackson v. Jackson*, 536 P.2d 1400 (Kan. 1975); *In re Estate of West*, 454 P.2d 462 (Kan. 1969).
102. *Century Trust Co. v. Burrow*, 58 P.2d 469 (Kan. 1936) (this sole authority involved §§2036 and 2038 inclusion of trust assets transferred *inter vivos*, as to which apportionment was denied). In *Estate of Pickrell*, 806 P.2d 1007 (Kan. 1991), the decedent's will directed payment of taxes without reimbursement. A trust subsequently executed directed the trustee to distribute to the estate a pro rata share of the taxes caused by inclusion of the trust in the decedent's estate, which was alleged to be inconsistent with the direction to pay all taxes from the estate without reimbursement. The court held, however, that the estate could accept the trust distribution and that, to the extent the will and trust were inconsistent, the later in time (the trust) should prevail.
103. *First Nat'l Bank v. United States*, 233 F. Supp. 19 (D. Kan. 1964); *Jackson v. Jackson*, 536 P.2d 1400 (Kan.

1975); *Spurrier v. First Nat'l Bank*, 485 P.2d 209 (Kan. 1971); see also Technical Advice Memorandum 9010006.

104. Prior to repeal the state inheritance tax was charged against each beneficiary's bequest. Kan. Stat. Ann. §§79-1541, 79-1564(d); 79-1569; *In re Estate of Pickrell*, 791 P.2d 41 (Kan. App. 1990); *Wendland v. Washburn University*, 667 P.2d 915 (Kan. App. 1983). The new state tax is Kan. Stat. Ann. §79-15,100, a pick up tax, that is payable in the same manner as the federal tax. See Kan. Stat. Ann. §§79-15,107, 79-15,124.

KENTUCKY

105. Reporter: **Sheldon G. Gilman, Louisville**
106. Ky. Rev. Stat. Ann. ch. 140.
107. *Trimble v. Hatchers Executors*, 173 S.W.2d 985 (Ky. 1943), is cited for the proposition that apportionment is required with respect to §2035 includible property, but note the date of the case and changes in the current tax law. See also Ky. Rev. Stat. Ann. §§140.020 and 140.040 with respect to §2035 and power of appointment property, respectively.
108. *Lincoln Bank & Trust Co. v. Huber*, 240 S.W.2d 89 (Ky. 1951); Ky. Rev. Stat. Ann. §§140.060, 140.080(1)(a).
109. However, because the state tax is on each transferee, the net effect is apportionment among the beneficiaries.
110. Ky. Rev. Stat. Ann. §140.095 for deaths within five years.
111. Ky. Rev. Stat. Ann. §140.230.

LOUISIANA

112. Reporter: **Paul L. Hood, Baton Rouge**
113. La. Rev. Stat. Ann. §§9:2431-9:2438; 47:2401 *et seq.* See *Succession of Martin*, 100 So. 2d 509 (La. 1958). The state inheritance tax attributable to certain payable on death accounts may be apportioned similarly under La. Rev. Stat. Ann. §§6:314E, 653E, and 766.1E.
114. La. Rev. Stat. Ann. §§9:2435B, E; 47:2402(e).
115. La. Rev. Stat. Ann. §9:2435.
116. La. Rev. Stat. Ann. §§9:2433, 47:2405; *In re Stelley's Estate*, 185 So. 2d 637 (La. 1939).
117. La. Civ. Code arts. 1416, 1421-1426.
118. La. Rev. Stat. Ann. §47:2431(7).
119. La. Civ. Code arts. 1422, 1424.

MAINE

120. Reporter: **David E. Hunt, Portland**
121. Maine Rev. Stat. Ann. Tit. 18-A §3-916 is the Uniform Estate Tax Apportionment Act.
122. Maine Rev. Stat. Ann. Tit. 18-A §3-916(b). Enforcement powers in the personal representative are provided under Maine Rev. Stat. Ann. Tit. 18-A §3-916(g).
123. Maine Rev. Stat. Ann. Tit. 18-A §3-916(e).
124. Maine Rev. Stat. Ann. Tit. 18-A §§3-916(e)(3), (e)(4).
125. Maine Rev. Stat. Ann. Tit. 18-A §3-916(f).
126. Maine Rev. Stat. Ann. Tit. 18-A, 3-916(a)(5).

MARYLAND

127. Reporter: **Hugh A. Mitchell, Jr., Baltimore**
128. Md. Code Ann., Tax-GEN. §7-308 is the Uniform Estate Tax Apportionment Act.
129. Md. Code Ann., Tax-GEN. §7-308(a), (b), (c). Enforcement powers in the personal representative are provided under Md. Code Ann., Tax-GEN. §7-308(d).
130. Section 2, ch. 555, Acts 1995, provides that references to "taxable estate" and to "interest(s)" of the decedent in Md. Code Ann., Tax-GEN. §7-308(a)(4) and 7-308(b) do not include any interest of the decedent that is not included in the decedent's taxable estate under §2001(b)(1)(A). As a result, apportionment of a decedent's federal and Maryland estate taxes may not be made to any adjusted taxable gift of the decedent notwithstanding any holding or dicta to the contrary in *Shepter v. Johns Hopkins Univ.*, 637 A.2d 1223 (1994).
131. Md. Code Ann., Tax-GEN. §7-308(e). See also §7-308(k): no special provision is made for a person who receives a bequest free of estate tax, but this provision makes sense only if such a person is excluded from paying any federal or Maryland estate tax.
132. See 76 Op. Att'y Gen. 392 (1991) Opinion No. 91-007.
133. Md. Code Ann., Tax-GEN. §7-308(e)(3).
134. Md. Code Ann. Tax-GEN. §7-308(f).
135. Md. Code Ann. Tax-GEN. §7-308(a)(5).

MASSACHUSETTS

136. Reporter: **Lawrence O. Spaulding, Jr., Orleans**
137. Mass. Gen. Laws ch. 65A, §5.
138. Mass. Gen. Laws ch. 65A, §5(1).
139. Mass. Gen. Laws ch. 65A, §§5(2) – 5(4); *Malden Trust Co. v. Bickford*, 109 N.E.2d 453 (Mass. 1952). By Mass. Gen. Laws ch. 65A, §5A, apportionment may not be asserted against an insurance company or any bank with respect to an account in the name of the decedent and any other person; instead the recipient of any insurance proceeds or account survivor must pay.
140. Mass. Gen. Laws ch. 191, §15; ch. 65A, §5(3); *First Nat'l Bank v. Judge Baker Guidance Center*, 431 N.E.2d 243 (Mass. App. 1982).
141. Mass. Gen. Laws ch. 65A, §§5(2), 5(3).
142. Although the nonprobate property outside apportionment rule in Mass. Gen. Laws ch. 65A, §5(3) may apply if the generation-skipping taxable transfer passes under a trust.

MICHIGAN

143. Mich. Comp. Laws §§700.3920 *et seq.* Prior to its repeal in 2000, Mich. Comp. Laws §720.11 *et seq.* was the Uniform Estate Tax Apportionment Act. As is true in all Uniform Act states, waiver of apportionment under Michigan law required a will provision. See *In re Estate of Roe*, 426 N.W.2d 797 (Mich. App. 1988) (trust tax clause with waiver of apportionment was not effective and the will simply specified that no provision was being made because the trust was directed to make all payments; therefore, no provision was effective to accomplish the decedent's intent). Now §700.3921(3) permits direction in any governing instrument with respect to the taxes attributable to property passing subject to that instrument, as well as authority to apportion taxes by will with respect to all assets subject to tax. If a conflict exists between instruments the provision in a will governs.
144. Mich. Comp. Laws §700.3920(a)(i) exempt preresiduary bequests of federal and state taxes and impose the full burden of taxes on the probate estate on the residue of the probate estate.
145. Mich. Comp. Laws §§700.3920(b)(i), subject to the same probate apportionment notion that, within a nonprobate disposition such as a trust, the "preresiduary" portion is exempt and all tax attributable to that source is paid from the "residue" thereof.
146. Mich. Comp. Laws §700.3921(3).

147. Mich. Comp. Laws §700.3922(1).
148. Mich. Comp. Laws §§700.3920(1)(a)(ii), (1)(b)(ii)(A), (1)(c).
149. Mich. Comp. Laws §700.3920(1).
150. Mich. Comp. Laws §700.3921(2).

MINNESOTA

151. Minn. Stat. §524.3-916 is the Uniform Estate Tax Apportionment Act.
152. Minn. Stat. §524.3-916(b). Enforcement powers in the personal representative are provided under Minn. Stat. §§524.3-916(d)(1), (g).
153. Unlike the Uniform Act, Minn. Stat. §524.3-916(b)(2)(i) does not preserve the priority of the federal incremental reimbursement right in §2207A and therefore creates a conflict between the state law proportionate apportionment dictated in §524.3-916(b)(1) and the federal reimbursement right.
154. Minn. Stat. §§524.3-916(e)(2), (e)(5).
155. Minn. Stat. §524.3-916(e).
156. Minn. Stat. §§524.3-916(e)(1), (e)(3).
157. Minn. Stat. §524.3-916(f).
158. Minn. Stat. §§524.3-916(b)(2), (f).

MISSISSIPPI

159. Reporter: **W. McDonald Nichols, Jackson**
160. Miss. Code Ann. §§27-10-7 *et seq.* is the Uniform Estate Tax Apportionment Act.
161. Miss. Code Ann. §27-10-13(2).
162. Miss. Code Ann. §27-10-13(4).
163. Miss. Code Ann. §27-10-15.
164. Miss. Code Ann. §§27-10-5(f), 27-10-7, 27-10-9(2).

MISSOURI

165. Reporter: **Michael D. Mulligan, St. Louis**
166. *In re Estate of Mapes*, 681 S.W.2d 476 (Mo. App. 1984), 817 S.W.2d 545 (Mo. 1991); *Estate of Wahlin*, 505 S.W.2d

99 (Mo. App. 1973); *Carpenter v. Carpenter*, 267 S.W.2d 632 (Mo. 1954).

167. *In re Estate of Nease*, 643 S.W.2d 97 (Mo. App. 1982).
168. Mo. Rev. Stat. §145.552 (Qualified Terminable Interest Property); *In re Estate of Mapes*, 681 S.W.2d 476 (Mo. App. 1984), 817 S.W.2d 545 (Mo. 1991); *Estate of Wahlin*, 505 S.W.2d 99 (Mo. App. 1973); *Sebree v. Rosen*, 349 S.W.2d 865 (Mo. 1961); *Carpenter v. Carpenter*, 267 S.W.2d 632 (Mo. 1954).
169. *Reed v. United States*, 316 F. Supp. 1228 (E.D. Mo. 1970); *Estate of Wahlin*, 505 S.W.2d 99 (Mo. 1973).
170. *Carpenter v. Carpenter*, 267 S.W.2d 632 (Mo. 1954).
171. Mo. Rev. Stat. §§143.771, 145.985.

MONTANA

172. Reporter: **David L. Johnson, Billings**
173. Mont. Code Ann. §72-16-601 *et seq.* is the Uniform Estate Tax Apportionment Act.
174. Mont. Code Ann. §72-16-603(1). Enforcement powers in the personal representative are provided under Mont. Code Ann. §72-16-608.
175. Mont. Code Ann. §72-16-603.
176. Mont. Code Ann. §72-16-607.
177. Mont. Code Ann. §72-16-607.
178. Mont. Code Ann. §72-16-606.
179. Mont. Code Ann. §72-16-604.

NEBRASKA

180. Reporter: **M. Douglas Deitchler, Lincoln**
181. Neb. Rev. Stat. §§30-24, 114, 77-2108.
182. Neb. Rev. Stat. §77-2108. Enforcement powers in the personal representative are provided under Neb. Rev. Stat. §§77-2110, 77-2111.
183. Neb. Rev. Stat. §§77-2001, 77-2007, 77-2008.03.
184. Neb. Rev. Stat. §§77-2004, 77-2007.04, 77-2108.
185. *Quadhamer v. Craig*, 418 N.W.2d 571 (Neb. 1988).
186. Neb. Rev. Stat. §77-2008.02, 77-2108.

187. Neb. Rev. Stat. §77-2108.
188. *Quadhamer v. Craig*, 418 N.W.2d 571 (Neb. 1988).

NEVADA

189. Reporter: **George K. Folsom, Reno**
190. Nev. Rev. Stat. §150.290 *et seq.*
191. Nev. Rev. Stat. §§150-300, 150.310, 150.330, 150.340(2).
192. Nev. Rev. Stat. §§150-300, 150-310, 150-330, 150-350, 150.360.
193. Nev. Rev. Stat. §150.330(3).
194. Nev. Rev. Stat. §150.330(4).
195. Nev. Rev. Stat. §150.340(1).
196. Nev. Rev. Stat. §150.350(3).
197. Nev. Rev. Stat. §150.336(8).
198. Nev. Rev. Stat. §150.235.

NEW HAMPSHIRE

199. N.H. Rev. Stat. Ann. §88-A:2 is the Uniform Estate Tax Apportionment Act.
200. N.H. Rev. Stat. Ann. §88-A:2; *Garos v. State Tax Comm'n*, 109 A.2d 844 (N.H. 1954). Enforcement powers in the personal representative are provided under N.H. Rev. Stat. Ann. §88-A:4, 88-A:7.
201. N.H. Rev. Stat. Ann. §§88-A-5I, 88-A-5V.
202. N.H. Rev. Stat. Ann. §88-A:5.
203. N.H. Rev. Stat. Ann. §§88-A:6.

NEW JERSEY

204. Reporter: **Robert A. Hetherington, III, Hackensack**
205. N.J. Rev. Stat. Ann. §3B:24-1 *et seq.*
206. N.J. Rev. Stat. Ann. §3B:24-2; *Bartel v. Clarenbach*, 274 A.2d 841 (N.J. Super. 1971); *Nat'l State Bank v. Nadeau*, 153 A.2d 854 (N.J. Super. 1959).
207. *In re Ericson's Estate*, 377 A.2d 946 (N.J. Super. Ch. Div. 1977); *In re Grenn's Estate*, 185 A.2d 57 (N.J. Super. 1962).

- 208. N.J. Rev. Stat. Ann. §3B:24-4; *In re Estate of Cole*, 491 A.2d 770 (N.J. Super. Ch. Div. 1984); *In re Estate of Rankin*, 404 A.2d 1200 (N.J. Super. 1979); *Gesner v. Roberts*, 225 A.2d 697 (N.J. 1967).
- 209. N.J. Rev. Stat. Ann. §54:35-6; *Kapnek v. Kapnek*, 118 A.2d 701 (N.J. Super. 1955); *Case v. Roebing*, 127 A.2d 409 (N.J. Super. 1956).
- 210. N.J. Rev. Stat. Ann. §3B:24-4c.
- 211. N.J. Rev. Stat. Ann. §§3B:19A-29a, 3B:19A-29j.
- 212. N.J. Rev. Stat. Ann. §3B:24-4.

- 225. N.Y. Est. Powers & Trusts Law §§2-1.8(c)(2); 5-1.1(c)(1)(B), 5-1.1-A(a)(2). See *In re Shubert*, 80 N.E.2d 410 (N.Y. 1962); *In re Blumenthal*, 56 N.E.2d 588 (N.Y. 1944); *In re Wolf*, 121 N.E.2d 224 (N.Y. 1954); *In re McKinney*, 477 N.Y.S.2d 367 (1984); *In re Tropp*, 324 N.Y.S.2d 518 (1971).
- 226. N.Y. Est. Powers & Trusts Law §2-1.8(c)(3).
- 227. N.Y. Est. Powers & Trusts Law §2-1.8(b); *In re Masten*, 546 N.Y.S.2d 880 (1989); *In re Brown*, 65 N.Y.S.2d 624 (1943).
- 228. N.Y. Tax Law §1022.

NEW MEXICO

- 213. Reporter: **Suzanne M. Barker, Albuquerque**
- 214. N.M. Stat. Ann. §45-3-916 is the Uniform Estate Tax Apportionment Act.
- 215. N.M. Stat. Ann. §45-3-916(B). Enforcement powers in the personal representative are provided under N.M. Stat. Ann. §45-3-916(D).
- 216. N.M. Stat. Ann. §45-3-916(B).
- 217. N.M. Stat. Ann. §45-3-916(E).
- 218. N.M. Stat. Ann. §45-3-916(E).
- 219. N.M. Stat. Ann. §45-3-916(F).
- 220. N.M. Stat. Ann. §45-3-916(I).
- 221. N.M. Stat. Ann. §45-3-916(A)(5).

NEW YORK

- 222. N.Y. Est. Powers & Trusts Law §2-1.8.
- 223. See *In re Gordon*, 510 N.Y.S.2d 815 (1986); *In re Bowen*, 347 N.Y.S.2d 862 (1973); *In re Molenhauer*, 13 N.Y.S.2d 619 (1939). Enforcement powers in the personal representative are provided under N.Y. Est. Powers & Trusts Law §§2-1.8 (e), 2-1.8(f).
- 224. N.Y. Est. Powers & Trusts Law §§2-1.8(c)(1), 1-8.1(d-1), 2-1.13; see *In re King*, 239 N.E.2d 875 (N.Y. 1968); *In re Pergament*, 218 N.Y.S.2d 831 (1961); *In re Rosen*, 199 N.Y.S.2d 838 (1960); *In re Ritzheimer*, 204 N.Y.S.2d 301 (1960); *In re Leonard*, 189 N.Y.S.2d 422 (1959); *In re Jones*, 158 N.Y.S.2d 861 (1956); *In re Shalett*, 82 N.Y.S.2d 797 (1948); *In re Tracy*, 72 N.E. 519 (N.Y. 1904). Recipients of *inter vivos* gifts includible in the decedent's gross estate are not subject to outside apportionment rule. *In re Metzler*, 579 N.Y.S.2d 288 (1992).

NORTH CAROLINA

- 229. Reporter: **Barry B. Kempson, Asheville**
- 230. N.C. Gen. Stat. §§28A-27-2, 105-32.3. The former is the Uniform Estate Tax Apportionment Act.
- 231. N.C. Gen. Stat. §§28A-27-2(a), -2(b), -8.
- 232. N.C. Gen. Stat. §§28A-27-5, 28A-27-5.30-3(a). Enforcement powers in the personal representative are provided under N.C. Gen. Stat. §28A-27-7.
- 233. N.C. Gen. Stat. §28A-27-5(b) provides that the previously taxed property and foreign death tax credits benefit any person paying the tax that generates the credit, §28A-27-5(c) provides that credits for "inheritance, succession, or estate taxes or taxes in the nature thereof in respect to property or interests includible in the estate shall inure to the benefit of the persons or interests chargeable with the payment thereof to the extent that, or in the proportion that, the credit reduces the tax." No provision deals with the §2015 credit.
- 234. N.C. Gen. Stat. §§28A-27-6 applies the stated rule with respect to federal estate tax. State inheritance tax, however, is apportioned, based on valuation tables. See N.C. Gen. Stat. §§8-46, 8-47, 105-19.

- 235. N.C. Gen. Stat. §28A-27-3(b).

NORTH DAKOTA

- 236. Reporter: **Robert E. Rosenfold, Fargo**
- 237. N.D. Cent. Code §30.1-20-16 is the Uniform Estate Tax Apportionment Act.
- 238. N.D. Cent. Code §30.1-20-16(5).
- 239. N.D. Cent. Code §57-31.7.

OHIO

240. Reporter: **James S. Wachs, Cincinnati**
241. Ohio Rev. Code Ann. §2113.85 *et seq.*
242. Ohio Rev. Code Ann. §2113.86(B). Enforcement powers in the personal representative are provided under Ohio Rev. Code Ann. §2113.88.
243. Ohio Rev. Code Ann. §2113.86(I).
244. Ohio Rev. Code Ann. §§2113.86(b), (C)(1), (D). But see *In re Estate of Widener*, 31 Ohio B. Rep. 304 (App. 1986) (the entire residue passed to charity; there was no tax clause in the document and the court rejected equitable apportionment). See also *Weeks v. Vandevor*, 233 N.E.2d 502 (Ohio 1968) (elective share under prior law was determined after payment of taxes; it is unclear whether the new law will cause a different result); *In re Estate of McVicker*, 492 N.E.2d 491 (Ohio Prob. 1985) (elective share was determined after payment of tax, new §§2113.86 and 2113.88 being deemed not to change that result); *Estate of Ferrara v. United States*, 94-1 U.S. Tax Cas. (CCH) ¶60,181 (N.D. Ohio 1994) (equitable apportionment did not protect a marital deduction because the burden on the residue rule precluded apportionment to a preresiduary bequest of the credit shelter amount; equitable apportionment only would have allocated the tax burden within the residue to a non-deductible portion of the residue).
245. Ohio Rev. Code Ann. §§2113.86(E). See *In re Estate of Finke*, 508 N.E.2d 158 (Ohio 1987).
246. Ohio Rev. Code Ann. §2113.86(G).
247. Ohio Rev. Code Ann. §§1339.45, 2113.861.
248. Ohio Rev. Code Ann. §2113.86(H).
249. Ohio Rev. Code Ann. §§1340.02(D), 2109.67(D).

OKLAHOMA

250. Reporter: **James R. Eagleton, Tulsa**
251. 68 Okla. Stat. §825.58; *Estate of LeDonne v. Stearman*, 730 P.2d 519 (Okla. 1986).
252. Enforcement powers in the personal representative are provided under 58 Okla. Stat. §268.
253. See *Lomon v. Citizens Nat'l Bank & Trust*, 689 P.2d 306 (Okla. 1984); *In re Estate of Bovaird*, 645 P.2d 500 (Okla. 1982); *In re Davidson*, 641 P.2d 1110 (Okla. 1982); cf. *In re Estate of Doan*, 727 P.2d 574 (Okla. 1986) (decedent's will was deemed to have overridden equitable apportionment with respect to a portion passing to charity).

OREGON

254. Reporter: **Robert D. Dayton, Portland**
255. Or. Rev. Stat. §116.303 *et seq.*
256. Or. Rev. Stat. §§116.303(1), (3).
257. Or. Rev. Stat. §§116.313, 116.343(5).
258. Or. Rev. Stat. §116.343.
259. Or. Rev. Stat. §116.353.
260. Or. Rev. Stat. §116.333.

PENNSYLVANIA

261. Reporter: **Bruce A. Rosenfield, Philadelphia**
262. 20 Pa. Cons. Stat. §§3702(a), 3704, 3705.
263. 20 Pa. Cons. Stat. §3702(b)(1); 72 Pa. Cons. Stat. §9144(a) exempt preresiduary bequests of federal and state taxes, respectively, and 20 Pa. Cons. Stat. §3702(a); 72 Pa. Cons. Stat. §9144(f) impose those taxes on the residue before division in to shares. See also *Estate of Wright*, 6 Fid. Rep. 2d 337 (1986). Enforcement powers in the personal representative are provided under 20 Pa. Cons. Stat. §3706; 72 Pa. Cons. Stat. §9146.
264. Subject to the same notion that, within a nonprobate disposition such as a trust, the "preresiduary" portion is exempt and all tax attributable to that source is paid from the "residue" thereof. 20 Pa. Cons. Stat. §3702(a), (b)(2); 72 Pa. Cons. Stat. §§9144(b), (e); *Estate of Biddle*, 3 D&C 2d 775 (1954).
265. 20 Pa. Cons. Stat. §§3702(c), (e), (g); 72 Pa. Cons. Stat. §9144(a). See *Estate of Pyle*, 570 A.2d 1074 (Pa. Super. 1990) (tax on preresiduary bequests reduced the residue before its division into shares; tax on the residue was prorated among residuary takers, with equitable apportionment applicable with respect to the tax on the residue but not with respect to the tax on preresiduary bequests); *Estate of Doyle*, 16 Fid. Rep. 276 (1966).
266. See *Estate of Lennon*, 6 Fid. Rep. 2d 142 (1986).
267. 20 Pa. Cons. Stat. §3702(d).
268. 20 Pa. Cons. Stat. §3702(g); 72 Pa. Cons. Stat. §9144(e).
269. 20 Pa. Cons. Stat. §3705.
270. 20 Pa. Cons. Stat. §3702(h).

RHODE ISLAND

- 271. R.I. Gen. Laws §44-23.1-1 *et seq.* is the Uniform Estate Tax Apportionment Act.
- 272. R.I. Gen. Laws §44-23.1-2. Enforcement powers in the personal representative are provided under R.I. Gen. Laws §§44-23.1-4, 44-23.1-7.
- 273. R.I. Gen. Laws §44-23.1-2.
- 274. R.I. Gen. Laws §44-23.1-5.
- 275. R.I. Gen. Laws §§44-23.1-5(c), (d).
- 276. R.I. Gen. Laws §44-23.1-6.
- 277. However, the state generation-skipping transfer pick up tax follows §2603. R.I. Gen. Laws §44-40-12.

SOUTH CAROLINA

- 278. Reporter: **F. Ladson Boyle, Columbia**
- 279. S.C. Code Ann. §62-3-916 is the Uniform Estate Tax Apportionment Act.
- 280. S.C. Code Ann. §62-3-916(e)(4).

SOUTH DAKOTA

- 281. Reporter: **Thomas H. Foye, Rapid City**
- 282. S.D. Codified Laws §29A-3-916 is the Uniform Estate Tax Apportionment Act.
- 283. S.D. Codified Laws §29A-3-916(b). State inheritance tax is apportioned to each taker. S.D. Codified Laws §10-40-2. Enforcement power in the personal representative is provided under S.D. Codified Laws §29A-3-916(d)(1).
- 284. S.D. Codified Laws §§29A-3-916(b), (i).
- 285. S.D. Codified Laws §29A-3-916(c)(2).
- 286. S.D. Codified Laws §§29A-3-916(e)(1), (e)(3).
- 287. S.D. Codified Laws §29A-3-916(f).
- 288. S.D. Codified Laws §29A-3-916(a)(5).

TENNESSEE

- 289. Reporter: **Robert L. McMurray, Cleveland**
- 290. Tenn. Code Ann. §30-2-614. The same rule applies for Tennessee state death tax purposes. Tenn. Code Ann.

§30-2-614(e). *Third Nat'l Bank v. Cotton*, 536 S.W.2d 330 (Tenn. 1976); *Wolfe v. Mid-Continent Corp.*, 435 S.W.2d 836 (Tenn. 1968); *Hutchison v. Montgomery*, 112 S.W.2d 827 (Tenn. 1938).

- 291. Tenn. Code Ann. §§30-2-614, 67-8-304; *Wolfe v. Mid-Continent Corp.*, 435 S.W.2d 836 (Tenn. 1968).
- 292. *Third Nat'l Bank v. Cotton*, 536 S.W.2d 330 (Tenn. 1976).
- 293. Tenn. Code Ann. §30-2-614(b); *Moore v. Moore*, 315 S.W.2d 526 (Tenn. 1958).
- 294. If will so directs, under Tenn. Code Ann. §35-50-110.

TEXAS

- 295. Tex. Prob. Code Ann. §322A is the Uniform Estate Tax Apportionment Act, to which Texas made a number of significant changes: (1) the tax apportionment scheme does not apply to the §2701(d)(1)(A) tax on unpaid dividends; (2) the apportionment dictated by the Act may be altered under §322A(b)(2) by the decedent in a will or by the instrument that governs disposition of property otherwise subject to tax payment; (3) the benefit of a §2032A reduction in tax attributed under §322A(i) to special use property is granted first to the recipient of that property and the recapture tax is apportioned among the persons “whose action or cessation of use caused the imposition of additional tax, unless all persons with an interest in the qualified real property agree in writing to dispose of the property, in which case the additional tax shall be apportioned among the remainder interests”; and (4) the benefit and the burden of any extension of time to pay any tax is apportioned to the persons who receive the property that generates the extension.
- 296. Enforcement powers in the personal representative are provided under Tex. Prob. Code Ann. §§322A(n), (o), (s), (u).
- 297. Tex. Prob. Code Ann. §§322A(d), (g).
- 298. Tex. Prob. Code Ann. §§322A(c), (d), (e), (f).
- 299. Tex. Prob. Code Ann. §§332A(d), (h).
- 300. Tex. Prob. Code Ann. §332A(r).
- 301. Tex. Prob. Code Ann. §§332A(a)(2), (b), (q).

UTAH

- 302. Utah Code Ann. §75-3-916 is the Uniform Estate Tax Apportionment Act.
- 303. Utah Code Ann. §75-3-916(2). Enforcement powers in the personal representative are provided under Utah Code Ann. §§75-3-916(4), (7).

304. Utah Code Ann. §§75-3-916(1)(d), (2).

305. Utah Code Ann. §§75-3-916(5)(b), (5)(e).

306. Utah Code Ann. §§75-3-916(c), (d).

307. Utah Code Ann. §75-3-916(6).

308. Utah Code Ann. §75-3-916(3)(c).

309. Utah Code Ann. §75-3-916(1)(f).

VERMONT

310. Vt. Stat. Ann. tit. 32, §7301 *et seq.* is the Uniform Estate Tax Apportionment Act.

311. Vt. Stat. Ann. tit. 32, §7302. Enforcement powers in the personal representative are provided under Vt. Stat. Ann. tit. 32, §§7304, 7307.

312. Vt. Stat. Ann. tit. 32, §§7301(d), 7302.

313. Vt. Stat. Ann. tit. 32, §§7305(b), (e).

314. Vt. Stat. Ann. tit. 32, §§7305(c), (d).

315. Vt. Stat. Ann. tit. 32, §7306.

VIRGINIA

316. Va. Code Ann. §64.1-161 *et seq.*

317. Enforcement powers in the personal representative are provided under Va. Code Ann. §64.1-163.

318. Va. Code Ann. §64.1-162. Incremental tax attributable to qualified terminable interest property includible in a surviving spouse's gross estate is apportioned by Va. Code Ann. §§64.1-161B, 64.1-165.

319. Va. Code Ann. §64.1-161A. See *Alexandria Nat'l Bank v. Thomas*, 194 S.E.2d 723 (Va. 1973); *Baylor v. Nat'l Bank of Commerce*, 72 S.E.2d 282 (Va. 1952); Rev. Rul. 81-165, 1981-1 C.B. 472.

320. Va. Code Ann. §64.1-161A.

321. Va. Code Ann. §64.1-161A.

WASHINGTON

322. Wash. Rev. Code §83.110 is the Uniform Estate Tax Apportionment Act.

323. Wash. Rev. Code §83.110.020. Enforcement powers in the personal representative are provided under Wash. Rev. Code §83.110.040.

324. Wash. Rev. Code §83.110.090.

325. Wash. Rev. Code §83.110.050(5).

326. Wash. Rev. Code §§83.110.050(3), (4)

327. Wash. Rev. Code §83.110.060, but not with respect to a §664 charitable remainder trust.

WEST VIRGINIA

328. Reporter: **Thomas G. Freeman, II, Charleston**

329. W. Va. Code §§44-2-16a, 44-3A-18. See also W. Va. Code §11-11-28. See *Dilmore v. Helfin*, 218 S.E.2d 888 (W. Va. 1975).

330. Enforcement provision in the personal representative are provided under W. Va. Code §§44-2-16(a)(3), 44-2-16(a)(4), 44-3A-18(c), 44-3A-18(d).

331. W. Va. Code §§44-2-16a(2), 44-3A-18(b).

WISCONSIN

332. Reporter: **Richard Z. Kabaker, Madison**

333. *Will of Uihlein*, 59 N.W.2d 641 (Wis. 1953).

334. See Wis. Stat. §863.11 for general abatement rules.

335. Wis. Stat. §72.28(c), which dictated payment from corpus, was repealed effective 1992.

WYOMING

336. Wyo. Stat. Ann. §2-10-101 *et seq.* is the Uniform Estate Tax Apportionment Act. There is no statutory apportionment applicable to the state pick up tax, as to which the burden on the residue rule is applicable. *In re Estate of Stratton*, 756 P.2d 1342 (Wyo. 1986).

337. Wyo. Stat. Ann. §2-10-103; *In re Ogburn's Estate*, 406 P.2d 655 (Wyo. 1965). Enforcement powers in personal representative are provided in Wyo. Stat. Ann. §2-10-105.

338. Wyo. Stat. Ann. §2-10-103; *In re Ogburn's Estate*, 406 P.2d 655 (Wyo. 1965).

339. Wyo. Stat. Ann. §§2-10-103, 2-10-106; *Taggart v. United States*, 306 F. Supp. 430 (D. Wyo. 1969), *aff'd* sub nom. *In re Rennie's Estate*, 430 F.2d 1388 (10th Cir. 1970); *In re Estate of Stevenson*, 445 P.2d 753 (Wyo. 1968).

340. Wyo. Stat. Ann. §2-10-106.

341. Wyo. Stat. Ann. §2-10-107.

