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Dear Steve:

Since meeting with you on July 25th, our group of tax and estate planning attorneys has continued to meet and discuss those issues raised at that meeting and identified in our July 26th letter. We are pleased to have the opportunity to share our experience and observations with the Commission as it seeks to develop its recommendations. Our purpose is to help frame alternatives for improving the overall tax environment. We are not writing on behalf of any particular individual or point of view. We now write to provide a more thorough analysis of those issues.

We understand the mission of the Commission includes preparing comprehensive recommendations to the D.C. City Council and the Mayor which: "(3) Make the District's tax policy more competitive with surrounding jurisdictions; ... [and] (5) Modernize, simplify, and increase transparency in the District's tax code." One area of the DC tax laws which has fallen into disrepair and out of step with surrounding jurisdictions is the DC Estate Tax.

The manner in which a person's assets are taxed at death at the federal level has been in considerable flux for more than a decade. A sea change occurred when Congress passed The Economic Growth and Tax Relief Reconciliation Act of 2001 (the "2001 Act"). That and subsequent Acts of Congress made significant modifications to the federal estate tax between 2001 and 2013. The biggest change was the phase-in of an increased federal estate tax exclusion that had been \$675,000 in 2001 and has increased in steps to an exclusion which today is \$5.25 Million. Over the same period, the federal maximum estate tax rate, which had been as high as 55% and as low as 35%, is now 40%. Finally, the estate tax state death tax credit allowed in the Internal Revenue Code which set the amount of estate taxes in most jurisdictions, including the District of Columbia, was phased out between 2002 and 2005 and replaced by a deduction. This caused added complications in how best to impose a state death tax, if at all. All of this was further complicated by the reliance on federal law embedded in the operation of and definitions in the DC Estate Tax law.

Despite an exclusion of over \$5 Million at the federal level, at present DC law imposes a tax on all property in excess of \$1 Million not passing at death to a surviving spouse or to charity. This means that the estate of a DC resident could be required to pay as much as \$478,182 in estate tax to the District before it is required to pay any estate tax at all to the

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federal government.¹ Further, in order to properly prepare a DC Estate Tax return for an estate with no federal filing obligation, a decedent's estate with taxable assets over \$1 Million is still obligated to prepare a complete federal estate tax return as an attachment to the DC Estate Tax return. In contrast, Virginia has eliminated its estate tax entirely and Maryland has taken steps to reduce the impact of its estate and inheritance taxes over the years leaving the District as the jurisdiction with the highest and, as we have discussed, most administratively burdensome estate tax in our region.

The Commission may find the policy responses of our sister states instructive. Skip Fox, a respected estates attorney from Charlottesville, Virginia, has carefully catalogued the state-by-state evolution in tax policy in this area. We have enclosed a copy of his most recent survey for your reference. One of the things that stands out is the number of states that no longer have any tax on assets that pass at death. Some of those states had constitutional issues which caused their tax to terminate but many others chose to eliminate what had been a source of state revenue in favor of greater reliance on other, broader based taxes. At present approximately 65% of the U.S. population lives in states without any tax at death and this includes our sister state of Virginia.² Other states have responded to the impact of the 2001 Act by conforming their applicable thresholds to the new federal level. Some states known to be higher taxing jurisdictions have increased their taxable thresholds: Illinois (\$4 Million) and Connecticut (\$2 Million).

Like its sister jurisdictions, the District has several options. It can: (i) eliminate the DC Estate Tax; (ii) fully conform the tax to current federal rules (including raising the taxable threshold to what is now \$5.25 Million); or (iii) adjust the threshold to something less than \$5.25 Million and make other technical adjustments to lessen the administrative burdens of complying with the tax.

Elimination of the DC Estate Tax:

Among the benefits to the District of Columbia in eliminating the estate tax would be to make its tax policy more competitive with not only its neighboring jurisdiction of Virginia but also with the tax policy of the other states that no longer tax assets that pass on death. While it may

¹ For a married District of Columbia couple, funding a traditional by-pass trust (also known as credit shelter trust) with the \$5.25 million federal applicable exclusion upon the first spouse's death would require a payment of \$420,800 in state death taxes if the state death tax is charged to the by-pass trust (i.e., resulting in a net funding of \$4,829,200). Alternatively, it would be possible to fund the by-pass trust with a net of \$5.25 million. To do this, the taxable estate would need to be \$5,728,181, resulting in state death tax of \$478,182. The federal estate tax would still be zero (since the deduction for state death taxes pursuant to Code § 2058 would reduce the taxable estate to \$5,250,000), but state death taxes would increase by \$57,382 (\$478,182 - \$420,800).

² Based on April 1, 2010 Census Population

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be viewed as purely speculative that the elimination of the DC Estate Tax would attract more affluent families to the District, it is clear that if eliminated, it would no longer be a disincentive to relocate in the District as opposed to Virginia, for example, or to one of the other jurisdictions that impose no such tax, for example Florida. While one may assume the loss of revenue resulting from elimination of the Estate Tax would be offset by increased revenues from other tax sources as a result of a more affluent tax base, our group is not the best source for such revenue estimates.

Full Conformity with Federal Law:

Full conformity with the Federal Rules has several distinct advantages. First, it would greatly simplify administration of the DC Estate Tax. The DC Estate Tax relies, to a great extent, on federal law. As a result, a decedent's taxable estate in excess of \$1 Million, even though less than the federal \$5.25 Million federal exclusion amount, is currently required to file certain schedules and pages from the federal estate tax return as part of the DC Estate Tax Return. These portions of the federal estate tax return that must be prepared in order to complete the DC Estate Tax return are never filed with nor reviewed by the U.S. Department of the Treasury. The District of Columbia Office of Tax and Revenue is solely responsible for the review and audit of all DC Estate Tax Returns that do not reach the federal \$5.25 Million exclusion amount. For estates that meet the federal threshold, administrative responsibility is shared with the federal government. Conformity with the federal rules would result in modernization, simplification and an increase in the transparency of the District of Columbia Estate Tax. Second, full conformity with the federal rules would lessen the burden on the taxpayer and bring uniformity (and consequently greater fairness) to the review process since this segment of DC residents that is currently subject to the DC Estate Tax, but not the federal estate tax, must prepare part of the federal estate tax return with no concomitant review by the Department of the Treasury

Increased Threshold with Technical Adjustment:

A third option, rather than full repeal of the DC Estate Tax or full conformity with the Federal Rules, would be to increase the threshold amount for taxable estates to \$2 Million or more as several states have done. A District of Columbia resident who owns a home, life insurance, and/or a retirement account will, upon death, likely have taxable assets in excess of the current \$1 Million DC Estate Tax threshold. While the threshold amount has remained unchanged, the assets subject to that threshold have continued to increase in value since Congress put the states on their own. The rapid escalation in District of Columbia real property values has contributed to this result. A tax policy that increases the threshold amount to account for the increase in property values or to provide for an annual inflation adjustment in the threshold amount would provide greater fairness in apportioning the estate tax.

Credit Ambiguity

In the 2001 Act, Congress changed the relationship of the federal estate tax to that of the states, including the District of Columbia. Prior to January 1, 2002, each state could impose up to a set amount in state "death taxes" that would be permitted as a credit against the federal estate tax. The imposition of D.C.'s estate tax was set on that basis. Under that prior law, the estate of a D.C. domiciliary would be required to file a DC Estate Tax return only if a federal tax

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return had been required. In some cases, a return was needed when no tax was due, because, although the gross estate was large enough to require a filing, the marital deduction or charitable deduction eliminated the tax.

Under old law the tax paid to the District for a decedent with no assets sited in other states would be the amount calculated under the State Death Tax Credit, Section 2011.³ This was sometimes referred to as a "sop-up tax" because it "sopped up" the maximum amount for which a dollar for dollar credit was allowed. Each dollar paid to the District reduced the federal estate tax by a dollar, up to a ceiling calculated under the credit. Therefore, the DC Estate Tax only siphoned off a portion of the estate tax that would otherwise have been paid in federal estate taxes and did not increase the total tax burden on the decedent's estate.

The 2001 Act changed this *credit* to a *deduction* for decedents dying in 2005 and thereafter. Although states took different approaches to the change in the federal law, some even eliminating the state estate tax, several adopted the "deduction" approach envisioned in the 2001 Act. Being a deduction against the federal estate tax, rather than a dollar for dollar credit, the state estate taxes now increase the total tax burden on a decedent's estate.

In some states, the state estate tax is calculated on the federal taxable estate, which is determined after a reduction for all applicable deductions, including the deduction for the state estate tax. That is, the state estate tax is deductible for both federal and state estate tax purposes. The D.C. Office of Tax and Revenue has taken the position that the D.C. tax does not reduce the D.C. taxable estate. There is no clear authority for this position.⁴

In the D.C. Estate Tax Form, Form D-76, however, the distinction between credit and deduction is not relevant. The form relies on figures from the federal estate tax form. For example, line 1 of Form D-76 calls for the gross estate, reduced by the "Total Allowable Deductions" on line 2, parenthetically described there as being "From federal schedules." The instructions to Form D-76 line 2 provide that the total allowable deductions from line 2 of the federal form should be entered, which are the deductions from the federal return *other than the deduction for state estate taxes*. The deduction for state estate taxes on the federal estate tax return is on line 3b. Therefore, the Office of Tax and Revenue's position is the D.C. estate tax is computed without regard to the deduction for the D.C. estate tax because it is not on a "schedule."

³ References to "Section" are to the Internal Revenue Code of 1986, as amended.

⁴ Arguably, the District of Columbia Code does not require any DC Estate Tax to be paid at all. Under D.C. Code Section 47-3702, D.C. imposes a "tax in the amount of the federal credit . . ." As noted above, no credit is given against the federal estate tax for state death taxes paid on estates of decedents dying on January 1, 2005 or later. As there is no credit, the argument goes, there can be no tax.

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However, because the state estate tax is also a deduction, although not stated on a "schedule," practitioners initially included the D.C. estate tax as a deduction with the other deductions, although it appears only on page one of the federal return, -- the summary page -- rather than on a "schedule." Most practitioners have abandoned this approach in light of the less favorable position taken by the Office of Tax and Revenue.

It should be noted that the regulations and the forms used in the Office of Tax and Revenue are inconsistent with the law. For decades, the D.C. estate tax was calculated using federal concepts and language. It was only after the 2001 Act that the District was required to adopt its own law.⁵ Some states, like Florida, were unable to adopt a tax because of constitutional constraints.

At the very least, it would appear to be more consistent to remove the credit language and make clear the D.C. estate tax liability is deductible along with all other federally permitted deductions in the computation of the D.C. estate tax. This would clarify the structure of the D.C. estate tax and treat all items that are deductible for federal estate tax purposes consistently as deductions for D.C. estate tax purposes.

Bubble Problem

As noted above, the 2001 Act raised the threshold at which an estate became subject to federal estate tax. Whereas under prior law the tax threshold would have reached \$1 million in 2006, the 2001 Act accelerated this threshold to 2002, and substantially raised the threshold in 2004, 2006 and 2009, to \$1.5 million, \$2 million, and \$3.5 million, respectively.⁶ The 2010 Act,⁷ as modified by the 2012 Act,⁸ raised the thresholds for 2011, 2012 and 2013 to \$5 million, \$5.12 million and \$5.25 million, respectively.

The D.C. City Council reacted to the 2001 Act by adopting a \$1 million threshold. The threshold amount is commonly called an exclusion and this language leads many to believe that

⁵ Illustrative of the difficulties of coping with these changes are the series of emergency and temporary laws adopted by the City Council which, at one point, incorrectly passed a \$1,000,000 "credit" that would have allowed an estate of almost \$2,500,000 to pass without tax. The City Council promptly fixed this error, by changing the reference to \$345,800, covering a taxable estate of \$1 million.

⁶ The level at which the threshold is set is sometimes referred to as an "exemption." This term is helpful, but inaccurate. The actual tax calculation requires determination of tax on the full taxable estate, offset by a tax allowance that eliminates the tax on the amounts below the threshold. This eliminates the use of lower tax brackets.

⁷ On December 17, 2010, President Obama signed into law the Tax Relief, Unemployment Reauthorization, and Job Creation Act of 2010 (TRA), which establishes a \$5,000,000 exclusion amount for federal gift, estate and generation-skipping transfer (GST) tax purposes (the "2010 Act").

⁸ American Taxpayer Relief Act of 2012 (the "2012 Act").

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the first \$1 million of a D.C. resident's taxable estate generates no D.C. estate tax. That is true if the D.C. taxable estate is \$1 million or under, but if the taxable estate exceeds \$1 million by any amount, D.C. estate tax is paid on the entire taxable estate rather than just the excess over \$1 million. For example, the D.C. estate tax on a taxable estate of \$1.1 million is \$38,800, or 38.8 percent of the excess over \$1 million! The D.C. estate tax on a taxable estate of \$2 million is \$99,600. Thus, if there is a tax, D.C. law taxes from the first dollar,⁹ even in instances where the estate is not taxable for federal purposes.

The bubble problem would be solved by giving a credit against the tax for the first \$1 Million of the taxable estate. Thus, as was likely the expectation of the City Council, the first \$1 million would not be taxed for any size estate. The D.C. estate tax on a taxable estate of \$2 million would be reduced to \$66,400. Maryland has made this adjustment to the way their tax is calculated.

Marital Deduction Tradeoff

Unlike Maryland residents, District residents face a choice whether to incur a state estate tax in the estate of the first spouse to die to save a federal estate tax later. Surviving spouses in Maryland need not be concerned about the early payment of taxes.

The typical estate plan of a married couple calls for use of the federal \$5.25 million exclusion amount of the first spouse to die to fund a trust, often called the by-pass trust, for the benefit of the surviving spouse. The by-pass trust is structured so that it (including all appreciation) does not attract estate taxes upon the surviving spouse's death – i.e., it is tax free at the first death due to the exclusion and “by-passes” estate tax at the second death as well. If the estate of the first spouse to die exceeds the exclusion amount, the excess estate is left to the surviving spouse (or in a marital trust), and that portion of the estate passes tax free at the first death because it qualifies for the estate tax marital deduction. The result is that no tax is imposed on the estate of the first spouse to die.

The survivor's estate is taxed on the survivor's property and on the assets in the marital trust, but not on the by-pass Trust. The surviving spouse also has his or her own exclusion of \$5.25 million. By using this traditional by-pass trust estate plan, a couple can now leave up to \$10.5 million to their descendants free of federal estate tax.

However, a couple who lives in the District must consider the DC Estate Tax implications of this traditional by-pass trust estate plan. As indicated above, fully funding the by-pass trust with \$5.25 million would require the payment of approximately \$480,000 in D.C. estate taxes in

⁹ Actually, the 60,001st dollar of tax, for historical reasons in the Code relating to taxation of estates before the tax reforms in 1976.

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10 months following the first spouse's death. Many D.C. couples would prefer to defer all estate tax payments until the death of the surviving spouse.

Maryland (among other states) has provided one solution that allows the full federal estate tax exclusion of the first spouse to die to be utilized while deferring all Maryland estate taxes until the death of the surviving spouse: a Maryland state-only QTIP Trust.¹⁰

Under the Maryland approach, the traditional by-pass trust estate plan is altered to provide that the by-pass trust is funded with the smaller Maryland exclusion of \$1 million. The difference between the Maryland exclusion and the \$5.25 million federal exclusion (in 2013, \$4.25 million) is transferred to a Maryland QTIP Trust, which would be qualified by a special marital deduction election made on the Maryland estate tax return. The Maryland QTIP Trust is not qualified for the federal estate tax marital deduction, and thus is not included in the surviving spouse's estate for federal purposes at the second death. For federal purposes, however, the \$1 million by-pass trust and the Maryland QTIP Trust use all of the \$5.25 million federal estate tax exclusion and neither of these trusts will be subject to federal estate tax upon the surviving spouse's death – i.e., together accomplishing the purposes of the by-pass trust in the traditional estate plan. Upon the surviving spouse's death the Maryland QTIP Trust is included in the surviving spouse's Maryland estate and Maryland estate tax on this trust is paid at that time.

Currently, D.C. law allows a marital deduction only when a federal estate tax marital deduction is allowed. Many would view it as preferable for the District to adopt a similar state-only QTIP election, separate from the federal marital deduction, following the pattern of Maryland. (This approach will not be necessary if the City Council eliminates the DC Estate Tax or conforms the threshold to the federal level of \$5 million as indexed.)

Portability

The 2010 Act introduced portability of the federal estate tax exclusion amount. In concept, one spouse's unused estate tax exclusion can be used by the surviving spouse against gifts made by the surviving spouse during life or at death. The policy permits a married couple to pass \$10.5 million of assets to their beneficiaries free of federal estate tax without having to implement complicated trusts or rearrange their assets to fund such trusts.

The married couple can, for example, own all of their assets in joint names with rights of survivorship or tenancy by the entirety. Each spouse might also name the other spouse as the primary beneficiary of any retirement accounts and insurance policies. Each spouse can

¹⁰ A Qualified Terminable Interest Property (QTIP) Trust is a form of trust qualifying for the federal estate tax marital deduction pursuant to Section 2056(b)(7). The trust is qualified for the federal estate tax marital deduction by an election on the federal estate tax return.

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prepare a simple Will that leaves any other property to the surviving spouse without the need to do any tax planning. Upon the death of the first spouse to die, the surviving spouse becomes the owner of all the couple's assets by operation of the joint ownership and beneficiary designations, and by being the beneficiary under the deceased spouse's Will or revocable trust.

To use the deceased spouse's \$5.25 million federal estate tax exclusion amount, the surviving spouse files a federal estate tax return upon the first spouse's death and makes the portability election on the return. That may be the only reason a federal estate tax return is needed. Thereafter, the surviving spouse has a \$10.5 million exclusion available to protect gifts and transfers upon death from federal estate and gift taxes.

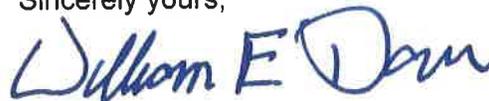
D.C. does not currently allow for portability of the D.C. \$1 million exclusion amount (or whatever higher amount is adopted in the future). Therefore, D.C. residents must continue to use special trust planning to utilize the deceased spouse's D.C. exclusion amount even though the amount is relatively low and otherwise would not warrant any sophisticated tax planning. With the change in federal law to allow portability, D.C. residents would be well served by D.C. adding the flexibility of portability to D.C.'s law.

Draft Revised Statutes and Forms

Attached are a redline of the DC Estate Tax statutes and the Form D-76, DC Estate Tax Forms and Instructions, showing revisions that would accomplish the changes discussed in this section of the letter, other than portability. Additional modifications would be required to reunify the D.C. exclusion with the federal exclusion and to provide for portability. While this is only an initial draft, we thought it might be helpful in your consideration of these matters.

Each of the individuals whose name appears below, thank you for the opportunity to share with the Commission our comments regarding the District of Columbia Estate Tax. We hope the Commission will find helpful our observations and comments as it considers its recommendations to the Council and the Mayor regarding any proposed changes to the current tax structure.

Sincerely yours,



William E. Davis

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2013 State Death Tax Chart

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2013 State Death Tax Chart

Revised July 24, 2013

This chart is maintained for the ACTEC Website and is updated regularly. Any comments on the chart or new developments that should be reflected on the chart may be sent to cfox@mcquirewoods.com.

Additional Resources

State	Type of Tax	Effect of EGTRRA on Pick-up Tax and Size of Gross Estate	Legislation Affecting State Death Tax	2013 State Death Tax Threshold
Alabama	None	Tax is tied to federal state death tax credit. AL ST § 40-15-2 .		
Alaska	None	Tax is tied to federal state death tax credit. AK ST § 43.31.011 .		
Arizona	None	Tax was tied to federal state death tax credit. AZ ST §§ 42-4051; 42-4001(2), (12) . On May 8, 2006, Governor Napolitano signed SB 1170 which permanently repeals Arizona's state estate tax.		
Arkansas	None	Tax is tied to federal state death tax credit. AR ST § 26-59-103; 26-59-106; 26-59-109 , as amended March, 2003.		
California	None	Tax is tied to federal state death tax credit. CA REV & TAX §§ 13302; 13411 .		
Colorado	None	Tax is tied to federal state death tax credit. CO ST §§ 39-23.5-103; 39-23.5-102 .		
Connecticut	Separate Estate Tax	As part of the two year budget which became law on September 8, 2009, the exemption for the separate estate and gift taxes was increased to \$3.5 million, effective January 1, 2010, the tax rates were reduced to a spread of 7.2% to 12%, and effective for decedents dying on or after January 1, 2010, the Connecticut tax is due six months after the date of death. CT ST § 12-391 . In May 2011, the threshold was lowered to \$2 million retroactive to January 1, 2011.		\$2,000,000
Delaware	Pick up Only	For decedents dying after June 30, 2009. The federal deduction for state death taxes is not taken into account in calculating the state tax. DE ST TI 30 §§ 1502(c)(2)	On March 28, 2013, the Governor signed HB 51 to eliminate the four year sunset provision that originally applied	\$5,250,000 (indexed for inflation)

			to the tax as enacted in June 2009.	
District of Columbia	Pick-up Only	<p>Tax frozen at federal state death tax credit in effect on January 1, 2001.</p> <p>In 2003, tax imposed only on estates exceeding <u>EGTRRA</u> applicable exclusion amount. Thereafter, tax imposed on estates exceeding \$1 million.</p> <p>DC CODE §§ <u>47-3702</u>; <u>47-3701</u>; approved by Mayor on June 20, 2003; effective retroactively to death occurring on and after January 1, 2003.No separate state QTIP election.</p>		\$1,000,000
Florida	None	<p>Tax is tied to federal state death tax credit.</p> <p>FL ST § <u>198.02</u>; FL CONST. Art. VII, Sec. 5</p>		
Georgia	None	<p>Tax is tied to federal state death tax credit.</p> <p>GA ST § <u>48-12-2</u>.</p>		
Hawaii	Modified Pick-up Tax	<p>Tax was tied to federal state death tax credit. HI ST §§ <u>236D-3</u>; <u>236D-2</u>; <u>236D-B</u> The Hawaii Legislature on April 30, 2010 overrode the Governor's veto of <u>HB 2866</u> to impose a Hawaii estate tax on residents and also on the Hawaii assets of a non-resident, non US citizen.</p>	<p>On May 2, 2012, the Hawaii legislature passed <u>HB2328</u> which conforms the Hawaii estate tax exemption to the federal estate tax exemption for decedents dying after January 25, 2012.</p>	\$5,250,000 (indexed for inflation) (for deaths occurring after January 25, 2012)
Idaho	None	<p>Tax is tied to federal state death tax credit.</p> <p>ID ST §§ <u>14-403</u>; <u>14-402</u>; <u>63-3004</u> (as amended Mar. 2002).</p>		
Illinois	Modified Pick-up Only	<p>On January 13, 2011, Governor Quinn signed <u>Public Act 096-1496</u> which increased Illinois' individual and corporate income tax rates. Included in the Act was the reinstatement of Illinois' estate tax as of January 1, 2011 with a \$2 million exemption. <u>Senate Bill 397</u> passed both the Illinois House and Senate as part of the tax package for Sears and CME on December 13, 2011. It increases the exemption to \$3.5 million for 2012 and \$4 million for 2013 and beyond. Governor Quinn signed the legislation on December 16, 2011. Illinois permits a separate state QTIP election, effective September 8, 2009. <u>35 ILCS 405/2(b-1)</u>.</p>		\$4,000,000
Indiana	None	<p>Pick-up tax is tied to federal state death tax credit.</p> <p>IN ST §§ <u>6-4.1-11-2</u>; <u>6-4.1-1-4</u>.</p> <p>Indiana has not decoupled but has a separate inheritance tax (<u>IN ST § 6-4.1-2-1</u>) and recognizes by administrative pronouncement a separate state QTIP election.</p>	<p>On May 11, 2013, Governor Pence signed <u>HB 1001</u> which repealed Indiana's inheritance tax retroactively to January 1, 2013. This replaced Indiana's prior law enacted in 2012 which phased out Indiana's inheritance tax over nine years beginning in 2013 and ending on December 31, 2021 and increased the inheritance tax</p>	

			exemption amounts retroactive to January 1, 2012.
Iowa	Inheritance tax	<p>Pick-up tax is tied to federal state death tax credit. IA ST § 451.2; 451.13.</p> <p>Effective July 1, 2010, Iowa specifically reenacted its pick-up estate tax for decedents dying after December 31, 2010. Iowa Senate File 2380, reenacting IA ST §451.2.</p> <p>Iowa has a separate inheritance tax on transfers to remote relatives and third parties.</p>	
Kansas	None	For decedents dying on or after January 1, 2007 and through December 31, 2009, Kansas had enacted a separate stand alone estate tax. KS ST § 79-15, 203	
Kentucky	Inheritance Tax	<p>Pick-up tax is tied to federal state death tax credit.</p> <p>KT ST § 140.130.</p> <p>Kentucky has not decoupled but has a separate inheritance tax and recognizes by administrative pronouncement a separate state QTIP election.</p>	
Louisiana	None	<p>Pick-up tax is tied to federal state death tax credit.</p> <p>LA R.S. §§ 47:2431; 47:2432; 47:2434.</p>	
Maine	Pick-up Only	<p>For decedents dying after December 31, 2002, pick-up tax is frozen at pre-EGTRRA federal state death tax credit, and imposed on estates exceeding applicable exclusion amount in effect on December 31, 2000 (including scheduled increases under pre-EGTRRA law) (L.D. 1319; March 27, 2003).</p> <p>On June 20, 2011, Maine's governor signed Public Law Chapter 380 into law, which will increase the Maine estate tax exemption to \$2 million in 2013 and beyond. The rates are also changed, effective January 1, 2013, to 0% for Maine estates up to \$2 million, 8% for Maine estates between \$2 million and \$5 million, 10 % between \$ 5 million and \$8 million and 12% for the excess over \$8 million. For estates of decedents dying after December 31, 2002, Sec. 2058 deduction is ignored in computing Maine tax and a separate state QTIP election is permitted. M.R.S. Title 36, Sec. 4062.</p> <p>A 2010 Tax Alert issued by the Maine Revenue Services department limits the amount of the state QTIP to \$2,500,000 (the difference between Maine's</p>	\$2,000,000

		<p>\$1,000,000 threshold and the \$3,500,000 federal exemption Maine recognizes in 2010).</p> <p>Maine also subjects real or tangible property located in Maine that is transferred to a trust, limited liability company or other pass-through entity to tax in a non resident's estate, <u>M.R.S. Title 36, Sec. 4064</u>.</p>	
Maryland	Pick-up Tax Inheritance Tax	<p>Tax is frozen at pre-<u>EGTRRA</u> federal state death tax credit. <u>MD TAX GENERAL § 7-309</u>.</p> <p>Effective January 1, 2004, the threshold for Maryland tax is capped at \$1 million. <u>Senate Bill 508</u> signed by Governor Erlich on May 26, 2004.</p> <p>Effective January 1, 2005, federal deduction for state death taxes under <u>Sec. 2058</u> is ignored in computing Maryland estate tax, thus eliminating a circular computation. <u>Senate Bill 508</u> signed by Governor Ehrlich on May 26, 2004.</p> <p><u>MD TAX GENERAL §§ 7-304; 7-309</u>, amended May 2004.</p> <p>On May 2, 2006, Governor Ehrlich signed <u>S.B. 2</u> which limits the amount of the federal credit used to calculate the Maryland estate tax to 16% of the amount by which the decedent's taxable estate exceeds \$1,000,000, unless the <u>Section 2011</u> federal state death tax credit is then in effect. It also permits a state QTIP election.</p> <p><u>MD TAX GENERAL § 7-309</u></p>	\$1,000,000
Massachusetts	Pick-up Only	<p>For decedents dying in 2002, pick-up tax is tied to federal state death tax credit. <u>MA ST 65C §§ 2A</u>.</p> <p>For decedents dying on or after January 1, 2003, pick-up tax is frozen at federal state death tax credit in effect on December 31, 2000. <u>MA ST 65C §§ 2A(a)</u>, as amended July 2002.</p> <p>Tax imposed on estates exceeding applicable exclusion amount in effect on December 31, 2000 (including scheduled increases under pre-<u>EGTRRA</u> law), even if that amount is below <u>EGTRRA</u> applicable exclusion amount.</p> <p>See, Taxpayer Advisory Bulletin (Dec. 2002), DOR Directive 03-02, <u>Mass. Guide to Estate Taxes (2003)</u> and <u>TIR 02-18</u></p>	\$1,000,000

		published by Mass. Dept. of Rev. Massachusetts Department of Revenue has issued directive, pursuant to which separate Massachusetts QTIP election can be made when applying state's new estate tax based upon pre- <u>EGTRRA</u> federal state death tax credit.		
Michigan	None	Tax is tied to federal state death tax credit. MI ST §§ <u>205.232</u> ; <u>205.256</u>		
Minnesota	Pick-up Only	Tax frozen at federal state death tax credit in effect on December 31, 2000, clarifying statute passed May 2002. Tax imposed on estates exceeding federal applicable exclusion amount in effect on December 31, 2000 (including scheduled increases under pre- <u>EGTRRA</u> law), even if that amount is below <u>EGTRRA</u> applicable exclusion amount. MN ST §§ <u>291.005</u> ; <u>291.03</u> ; instructions for <u>MN Estate Tax Return</u> ; <u>MN Revenue Notice 02-16</u> . No separate state QTIP election permitted.	On May 23, 2013, the governor signed the <u>Omnibus Tax Bill, HF0677</u> . This bill includes the following provisions affecting the estate and gift taxes: 1. A new Minnesota gift tax imposed at a flat rate of 10%, and a taxpayer has a lifetime credit against the tax of \$100,000 (that credit would exclude \$1,000,000 of cumulative taxable gifts). The effective date for the new Minnesota gift tax is July 1, 2013. The Minnesota definition of "taxable gifts" closely follows the federal concept of "taxable gifts," including gift tax annual exclusions, gift-splitting, charitable deductions, and marital deductions. 2. The Minnesota's estate tax so that the tax is computed by including taxable gifts made within three years of death. This provision will generally apply retroactively to decedents dying after December 31, 2012. 3. This bill changes Minnesota's estate tax with respect to the situs of property owned by a pass-through entity (e.g., an LLC, partnership, or S corporation that owns Minnesota real property or tangible personal property). This change ignores the pass-through entity for purposes of applying the Minnesota estate tax to Minnesota real property or tangible personal property owned by the pass-through entity. This provision applies retroactively to decedents dying after December 31, 2012. 4. Although Minnesota's state estate tax exclusion amount is currently \$1 million, Minnesota allows an additional deduction in computing the Minnesota taxable estate of up to \$4	\$1,000,000

			million for "qualified small business property" or "qualified farm property." This was enacted in 2011 and applies for decedents dying after June 30, 2011. This new Omnibus Tax Bill includes several clarifications to the rules for qualified small business property and qualified farm property (previously, Minnesota Revenue had applied a very strict reading of the requirements for these deductions, and this bill clarifies or relaxes those requirements). These revisions will apply retroactively to decedents dying after June 30, 2011.	
Mississippi	None	Tax is tied to federal state death tax credit. <u>MS ST § 27-9-5.</u>		
Missouri	None	Tax is tied to federal state death tax credit. <u>MO ST §§ 145.011; 145.091.</u>		
Montana	None	Tax is tied to federal state death tax credit. <u>MT ST § 72-16-904; 72-16-905.</u>		
Nebraska	County Inheritance Tax	Nebraska through 2006 imposed a pick-up tax at the state level. Counties impose and collect a separate inheritance tax. <u>NEB REV ST. § 77-2101.01(1).</u>		
Nevada	None	Tax is tied to federal state death tax credit. <u>NV ST §§ 375A.025; 375A.100.</u>		
New Hampshire	None	Tax is tied to federal state death tax credit. <u>NH ST §§ 87:1; 87:7.</u>		
New Jersey	Pick-up Tax/Inheritance Tax	For decedents dying after December 31, 2002, pick-up tax frozen at federal state death tax credit in effect on December 31, 2001.NJ ST § 54:38-1 Pick-up tax imposed on estates exceeding federal applicable exclusion amount in effect December 31, 2001 (\$675,000), not including scheduled increases under pre- <u>EGTRRA</u> law, even though that amount is below the lowest <u>EGTRRA</u> applicable exclusion amount. The executor has the option of paying the above pick-up tax or a similar tax prescribed by the NJ Dir. Of Div. of Taxn. NJ St §§ 54:38-1; approved on July 1, 2002.		\$675,000

		<p>In <u>Oberhand v. Director, Div. of Tax</u>, 193 N.J. 558 (2008), the retroactive application of New Jersey's decoupled estate tax to the estate of a decedent dying prior to the enactment of the tax was declared "manifestly unjust", where the will included marital formula provisions. In <u>Estate of Stevenson v. Director</u>, 008300-07 (N.J. Tax 2-19-2008) the NJ Tax Court held that in calculating the New Jersey estate tax where a marital disposition was burdened with estate tax, creating an interrelated computation, the marital deduction must be reduced not only by the actual NJ estate tax, but also by the hypothetical federal estate tax that would have been payable if the decedent had died in 2001.</p> <p>New Jersey allows a separate state QTIP election when a federal estate tax return is not filed and is not required to be filed.</p> <p>The New Jersey Administrative Code also requires that if the federal and state QTIP election is made, they must be consistent. NJAC 18:26-3A.8(d)</p>	
New Mexico	None	<p>Tax is tied to federal state death tax credit.</p> <p>NM ST §§ 7-7-2; 7-7-3.</p>	
New York	Pick-up Only	<p>Tax frozen at federal state death tax credit in effect on July 22, 1998. <u>NY TAX § 951</u>.</p> <p>Governor signed <u>S. 6060</u> in 2004 which applies New York Estate Tax on a <i>pro rata</i> basis to non-resident decedents with property subject to New York Estate Tax. On March 16, 2010, the New York Office of Tax Policy Analysis, Taxpayer Guidance Division issued a notice permitting a separate state QTIP election when no federal estate tax return is required to be filed such as in 2010 when there is no estate tax or when the value of the gross estate is too low to require the filing of a federal return. See <u>TSB-M-10(1)M Advisory Opinion (TSB-A-08(1)M</u> (October 24, 2008) provides that an interest in an S Corporation owned by a non-resident and containing a condominium in New York is an intangible asset as long as the S Corporation has a real business purpose. If the S Corporation has no business purpose, it appears that New York would look through the S Corporation and subject the condominium to New York estate tax in the estate of the non-resident. There would likely be no business purpose if the sole reason for forming the S Corporation was to own</p>	\$1,000,000

		assets.		
North Carolina	None		On July 23, 2013, the Governor signed HB 998 which repealed the North Carolina estate tax retroactively to January 1, 2013.	
North Dakota	None	Tax is tied to federal state death tax credit. ND ST § 57-37.1-04		
Ohio	None	Governor Taft signed the budget bill, 2005 HB 66 , repealing the Ohio estate (sponge) tax prospectively and granting credit for it retroactively. This was effective June 30, 2005 and killed the sponge tax. On June 30, 2011, Governor Kasich signed HB 153 , the biannual budget bill, which contains a repeal of the Ohio state estate tax effective January 1, 2013.		
Oklahoma	None	Tax is tied to federal state death tax credit. OK ST Title 68 § 804 The separate estate tax was phased out as of January 1, 2010.		
Oregon	Separate Estate Tax	On June 28, 2011, Oregon's governor signed HB 2541 which replaces Oregon's pick-up tax with a stand-alone estate tax effective January 1, 2012. The new tax has a \$1 million threshold with rates increasing from ten percent to sixteen percent between \$1 million and \$9.5 million. Determination of the estate for Oregon estate tax purposes is based upon the federal taxable estate with adjustments.		\$1,000,000
Pennsylvania	Inheritance Tax	Tax is tied to the federal state death tax credit to the extent that the available federal state death tax credit exceeds the state inheritance tax. Pennsylvania had decoupled its pick-up tax in 2002, but has now recoupled retroactively. The recoupling does not affect the Pennsylvania inheritance tax which is independent of the federal state death tax credit. Pennsylvania recognizes a state QTIP election.		
Rhode Island	Pick-up Only	Tax frozen at federal state death tax credit in effect on January 1, 2001, with certain adjustments (see below). RI ST § 44-22-1 . Rhode Island recognized a separate state QTIP election in the State's Tax Division Ruling Request No. 2003-03 Rhode Island's Governor signed in to law on June 30, 2009, effective for deaths occurring on or after January 1, 2010, an increase in the		\$910,725

		amount exempt from Rhode Island estate tax from \$675,000, to \$850,000, with annual adjustments beginning for deaths occurring on or after January 1, 2011 based on "the percentage of increase in the <u>Consumer Price Index for all Urban Consumers (CPI-U)</u> rounded up to the nearest five dollar (\$5.00) increment." RI ST § 44-22-1.1.		
South Carolina	None	Tax is tied to federal state death tax credit. SC ST §§ 12-16-510; 12-16-20 and 12-6-40, amended in 2002.		
South Dakota	None	Tax is tied to federal state death tax credit. SD ST §§ 10-40A-3; 10-40A-1 (as amended Feb. 2002).		
Tennessee	Inheritance Tax	<p>Pick-up tax is tied to federal state death tax credit. TN ST §§ 67-8-202; 67-8-203.</p> <p>Tennessee has not decoupled, but has a separate inheritance tax and recognizes by administrative pronouncement a separate state QTIP election.</p>	<p>On May 2, 2012, the Tennessee legislature passed <u>HB 3760/SB 3762</u> which phases out the Tennessee Inheritance Tax as of January 1, 2016. The Tennessee Inheritance Tax Exemption is increased to \$1.25 million in 2013, \$2 million in 2014, and \$5 million in 2015.</p> <p>On May 2, 2012, the Tennessee legislature also passed <u>HB 2840/SB2777</u> which repeals the Tennessee state gift tax retroactive to January 1, 2012.</p>	
Texas	None	Tax is tied to federal state death tax credit. TX TAX §§ 211.001; 211.003; 211.051		
Utah	None	Tax is tied to federal state death tax credit. UT ST § 59-11-102; 59-11-103		
Vermont	Modified Pick-up	<p>In 2010, Vermont increased the estate tax exemption threshold from \$2,000,000 to \$2,750,000 for decedents dying January 1, 2011. As of January 1, 2012 the exclusion is scheduled to equal the federal estate tax applicable exclusion, so long as the FET exclusion is not less than \$2,000,000 and not more than \$3,500,000. VT ST T. 32 § 7442a.</p> <p>Previously the estate tax was frozen at federal state death tax credit in effect on January 1, 2001. VT ST T. 32 §§ 7402(8), 7442a, 7475, amended on June 21, 2002.</p> <p>Threshold was limited to \$2,000,000 in 2009 when the legislature overrode the Governor's veto of <u>H. 442</u>.</p> <p>No separate state QTIP election permitted.</p>		\$2,750,000
Virginia	None	Tax is tied to federal state death tax		

		<p>credit. <u>VA ST §§ 58.1-901; 58.1-902.</u></p> <p>The Virginia tax was temporarily repealed effective July 1, 2007. Previously, the tax was frozen at federal state death tax credit in effect on January 1, 1978. Tax was imposed only on estates exceeding <u>EGTRRA</u> federal applicable exclusion amount. <u>VA ST §§ 58.1-901; 58.1-902.</u></p>		
Washington	Separate Estate Tax	<p>On February 3, 2005, the Washington State Supreme Court unanimously held that Washington's state death tax was unconstitutional. The tax was tied to the current federal state death tax credit, thus reducing the tax for the years 2002 - 2004 and eliminating it for the years 2005 - 2010. <u>Hemphill v. State Department of Revenue</u> 2005 WL 240940 (Wash. 2005).</p> <p>In response to <u>Hemphill</u>, the Washington State Senate on April 19 and the Washington House on April 22, 2005, by narrow majorities, passed a stand-alone state estate tax with rates ranging from 10% to 19%, a \$1.5 million exemption in 2005 and \$2 million thereafter, and a deduction for farms for which a <u>Sec. 2032A</u> election could have been taken (regardless of whether the election is made). The Governor signed the legislation.</p> <p>Washington voters defeated a referendum to repeal the Washington estate tax in the November 2006 elections. Washington permits a separate state QTIP election. <u>WA ST §83.100.047.</u></p>	<p>On June 14, 2013, Governor Inslee signed <u>HB 2075</u>, which closed an exemption for marital trusts retroactively immediately prior to when the Department of Revenue was about to start issuing refund checks, created a deduction for up to \$2.5 million for certain family owned businesses and indexes the \$2 million Washington state death tax threshold for inflation.</p>	\$2,000,000
West Virginia	None	<p>Tax is tied to federal state death tax credit. <u>WV § 11-11-3.</u></p>		
Wisconsin	None	<p>Tax is tied to federal state death tax credit <u>WI ST § 72.01(11m).</u></p> <p>For deaths occurring after September 30, 2002, and before January 1, 2008, tax was frozen at federal state death tax credit in effect on December 31, 2000 and was imposed on estates exceeding federal applicable exclusion amount in effect on December 31, 2000 (\$675,000), not including scheduled increases under pre-<u>EGTRRA</u> law, even though that amount is below the lowest <u>EGTRRA</u> applicable exclusion amount. Thereafter, tax imposed only on estates exceeding <u>EGTRRA</u> federal applicable exclusion amount.</p> <p><u>WI ST §§ 72.01; 72.02</u>, amended in 2001; WI Dept. of Revenue website.</p>		

		<p>On April 15, 2004, the Wisconsin governor signed 2003 Wis. Act 258, which provides that Wisconsin will not impose an estate tax with respect to the intangible personal property of a non-resident decedent that has a taxable situs in Wisconsin even if the non-resident's state of domicile does not impose a death tax. Previously, Wisconsin would impose an estate tax with respect to the intangible personal property of a non-resident decedent that had a taxable situs in Wisconsin if the state of domicile of the non-resident had no state death tax.</p>	
Wyoming	None	<p>Tax is tied to federal state death tax credit.</p> <p>WY ST §§ 39-19-103; 39-19-104.</p>	

See, [List of direct URLs to Recent State Death Tax Forms \(being compiled\)](#) and Findlaw, [Links and citations to estate, inheritance, and similar laws for DC and all states](#)

See [The Decoupling of the Federal and State Estate Taxes](#) by Linda B. Hirschson, [Ramification for Estate Planners of the Phase-Out of the federal State Death Tax Credit: Boom, Bust or Unknown?](#) by Charles D. Fox, Robert C. Pomeroy and Susan L. Abbott, [Impact on States of Federal Estate Tax "Repeal"](#) by Joshua S. Rubenstein, [Effect of the Decoupling of State Death Taxes from the EGTRRA State Death Tax Credit On Deathtime and Lifetime Planning](#) by Robert C. Pomeroy (PDF Format), [State Death Taxes in 2005](#) by Robert M. Brucken and [Planning Under the Crazy Quilt of State Death Taxes](#) by Dan W. Holbrook. Other Resources: papers from the Center on Budget and Policy Priorities on [Many States Are Decoupling from the Federal Estate Tax Cut](#) (updated 1/14/2004); and McLaughlin, [Recent Federal Tax Legislation and the States](#) - July 2002 from the National Conference on State Legislatures.

Draft Revised Statutes and Forms

DC ST § 47-3701

Formerly cited as DC ST 1981 § 47-3701

District of Columbia Official Code 2001 Edition

Division VIII. General Laws.

Title 47. Taxation, Licensing, Permits, Assessments, and Fees. (Refs & Annos)

Chapter 37. Inheritance and Estate Taxes. (Refs & Annos)

→ § 47-3701. Definitions.

For the purpose of this chapter, the term:

(1) - Adjusted taxable estate" means the taxable estate reduced by \$60,000.

(2) "Council" means the Council of the District of Columbia.

(32) "Decedent" means a deceased person who died on or after April 1, 1987.

(43) "District" means the District of Columbia.

(45) "Federal credit" means:

(A) For a decedent whose death occurs on or after April 1, 1987, but prior to January 1, 2002, the maximum amount of credit for state death taxes allowable by section 2011 of the United States Internal Revenue Code of 1954, approved August 6, 1954 (68A Stat. 3, 26 U.S.C. § 1 et seq.), as in effect it existed on January 1, 1986.

(B) For a decedent whose death occurs on or after January 1, 2002, but prior to January 1, 2003,†

(†) the maximum amount of credit for state death taxes allowed by section 2011 of the Internal Revenue Code, provided, however, that†

(†) Any scheduled increase in the unified credit provided in section 2010 of the Internal Revenue Code or thereafter shall not apply and the amount of the unified credit shall be limited to \$220,550,† and

[NOTE: the point in prior (iii) was moved to 47-3705(a)(2), which already included the \$1 MM filing threshold for later years]

(iii) An estate tax return shall not be required to be filed if the decedent's gross estate does not exceed \$675,000.

(C) For a decedent whose death occurs on or after January 1, 2003, but prior to January 1, 2008,

(i) ~~The maximum amount of credit for state death taxes allowed by section 2011 of the Internal Revenue Code,~~ provided, however, that

(ii) ~~Any scheduled increase in the unified credit provided in section 2010 of the Internal Revenue Code or thereafter shall not apply and the amount of the unified credit shall be~~ limited to \$345,800, ~~and~~

~~(iii) An estate tax return shall not be required to be filed if the decedent's gross estate does not exceed \$1 million.~~

(D) For a decedent whose death occurs on or after January 1, 2008, the estate tax shall be imposed without reference to the federal credit, as described in section 47-3702(b) below.

(65) "Gross estate" means gross estate as defined in the Internal Revenue Code.

(67) "Internal Revenue Code" means the Internal Revenue Code as in effect on the date of the decedent's death, provided, however, that if the federal estate tax is not in effect at the time of the decedent's death, it means the Internal Revenue Code as in effect immediately before the repeal of the federal estate tax of 1986, approved October 22, 1986 (100 Stat. 2085, 26 U.S.C. § 1 et seq.), in effect for federal estate tax purposes on January 1, 2001, unless a different meaning is clearly required by the provisions of this chapter.

(87) "Mayor" means the Mayor of the District of Columbia.

(98) "Nonresident" means a decedent who was domiciled outside the District at his or her death.

(109) "Personal representative" means the personal representative or other person appointed by the court to administer the property of the decedent. If there is no personal representative or other person appointed, qualified, and acting within the District, then any person in actual or constructive possession of any property having a taxable situs in the District that is included in the federal gross estate of the decedent (whether or not a federal estate tax return must be filed) shall be deemed to be a personal representative to the extent of the property and the District estate tax due with respect to the property.

(110) "Resident" means a decedent who was domiciled in the District at his or her death.

(124) "State" means any state, territory, or possession of the United States and the District.

(132) "Taxable estate" means taxable estate as defined in § 2051 of the Internal Revenue Code of 1954. [NOTE: this includes the deduction for state death taxes, as well as all other allowable deductions.]

(14) "Taxable situs" means:

(A) with regard to real property, the place where the property is situated;

(B) with regard to tangible personal property, the place where the property is customarily located at the time of the decedent's death; and

(C) with regard to intangible personal property, the domicile of the decedent at the time of the decedent's death, except that intangible personal property used in a trade or business in the District shall have a taxable situs in the District regardless of the domicile of the owner.

[NOTE: this definition had been provided in (c) of both 3702 and 3703.1

(135) "Value" means value as finally determined for federal estate tax purposes, if a federal estate tax return is filed, or as otherwise defined under the Internal Revenue Code of 1954.

§ 47-3702. Tax on transfer of taxable estate of residents; amounts; credit; property of resident defined.

(a) For every resident dying on or after April 1, 1987 but before January 1, 2008. A tax in the amount of the federal credit is imposed on the transfer of the taxable estate ~~having its taxable situs in the District~~ of every resident dying on or after April 1, 1987, subject, where applicable, to the credit provided for in subsection ~~(b)1~~ of this paragraph (a).

section. [NOTE, because this para, before edit, refers to "taxable situs in the District," doesn't the reduction in (1) below result in potential double-reduction? Perhaps bracketed language should come out]

~~(b)1~~ If any real or tangible personal property of a resident has a taxable situs is located outside the District, and subject to a death tax imposed by another state for which a credit is allowed under § 2011 of the Internal Revenue Code of 1954, the amount of tax due under this section shall be credited with the lesser of:

~~(2)~~(i) The amount of the death tax paid the other state and that qualifies for credit against the federal estate tax; or

~~(2)~~(ii) The amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of that part of the gross estate over which another state or states have jurisdiction to the same extent that the District would exert jurisdiction under this chapter with respect to the residents of the other state or states and the denominator of which is the value of the decedent's gross estate.

(b) For every resident dying on or after January 1, 2008, the estate tax shall be the amount computed by applying the rate schedule under subsection (1) of this paragraph (b) to the adjusted taxable estate, reduced by a credit of \$33,200 and subject, where applicable, to the credit provided for in subsection (2) of this paragraph (b).

(1) Rate schedule

**If the amount of the
adjusted taxable estate
is:**

Not over \$40,000
Over \$40,000 but less than \$90,000
Over \$90,000 but less than \$140,000

Over \$140,000 but less than \$240,000

Over \$240,000 but less than \$440,000

Over \$440,000 but less than \$640,000

Over \$640,000 but less than \$840,000

Over \$840,000 but less than \$1,040,000

Over \$1,040,000 but less than \$1,540,000

Over \$1,540,000 but less than \$2,040,000

Over \$2,040,000 but less than \$2,540,000

Over \$2,540,000 but less than \$3,040,000

Over \$3,040,000 but less than \$3,540,000

Over \$3,540,000 but less than \$4,040,000

Over \$4,040,000 but less than \$5,040,000

Over \$5,040,000 but less than \$6,040,000

Over \$6,040,000 but less than \$7,040,000

Over \$7,040,000 but less than \$8,040,000

Over \$8,040,000 but less than \$9,040,000

Over \$9,040,000 but less than \$10,040,000

Over \$10,040,000

The tentative tax is:

\$0
0.8% of the amount over \$40,000
\$400 plus 1.6% of the amount over
\$90,000
\$1,200 plus 2.4% of the amount over
\$140,000
\$3,600 plus 3.2% of the amount over
\$240,000
\$10,000 plus 4.0% of the amount over
\$440,000
\$18,000 plus 4.8% of the amount over
\$640,000
\$27,600 plus 5.6% of the amount over
\$840,000
\$38,800 plus 6.4% of the amount over
\$1,040,000
\$70,800 plus 7.2% of the amount over
\$1,540,000
\$106,800 plus 8.0% of the amount
over \$2,040,000
\$146,800 plus 8.8% of the amount
over \$2,540,000
\$190,800 plus 9.6% of the amount
over \$3,040,000
\$238,800 plus 10.4% of the amount
over \$3,540,000
\$290,000 plus 11.2% of the amount
over \$4,040,000
\$402,800 plus 12.0% of the amount
over \$5,040,000
\$522,800 plus 12.8% of the amount
over \$6,040,000
\$650,800 plus 13.6% of the amount
over \$7,040,000
\$786,800 plus 14.4% of the amount
over \$8,040,000
\$930,800 plus 15.2% of the amount
over \$10,040,000
\$1,082,800 plus 16.0% of the amount
over \$10,040,000

(b2) [NOTE: the following is a repeat of the original language in (1) above, red-lined to show changes, for decedents dying after 12/31/07] If any real or tangible personal property of a resident has a taxable situs located outside the District, and subject to a death tax imposed by another state for which a credit is allowed under § 2011 of the Internal Revenue Code of 1954, the amount of tax due under this section shall be reduced by the proportion that the value of such real or tangible property outside the District bears to the amount of the entire estate of the decedent, credited with the lesser of:

(1) The amount of the death tax paid the other state and that qualifies for credit against the federal estate tax; or

(2) An amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of that part of the gross estate over which another state or states have jurisdiction to the same extent that the District would exert jurisdiction under this chapter with respect to the resident of the other state or states and the denominator of which is the value of the decedent's gross estate.

(3)(i) With regard to an election to treat property as marital deduction qualified terminable interest property in calculating the estate tax, an irrevocable election made on a timely filed District estate tax return shall be deemed to be an election as required by § 2056(b)(7) of the Internal Revenue Code, without regard to the citizenship of the surviving spouse.

(ii) An election under this subsection made on a timely filed District estate tax return shall be recognized for purposes of calculating the District estate tax even if an inconsistent election is made for the same decedent for federal estate tax purposes.

(4) For purposes of calculating estate tax, a decedent shall be deemed to have had a qualifying income interest for life under 2044(a) of the Internal Revenue Code with regard to any property for which a marital deduction qualified terminable interest property election was made for the decedent's predeceased spouse on a timely filed

District estate tax return under subsection (3) of this section (b).

(c) For the purpose of this section, taxable situs means in regard to:

(1) Real property the place where the property is situated;

(2) Tangible personal property — the place where the property is customarily located at the time of the decedent's death; and

(3) Intangible personal property — the domicile of the decedent at the time of the decedent's death, except that intangible personal property used in a trade or business in the District shall have a taxable situs in the District regardless of the domicile of the owner.

→ § 47-3703. Tax on transfer of taxable estate of nonresidents;
property of nonresident defined.

(a) A tax in an amount computed as provided in this section is imposed on the transfer of every nonresident's taxable estate having its taxable situs in the District.

(b) The tax shall be an amount computed by multiplying the tax determined under section 47-3702 above ~~federal credit~~ by a fraction, the numerator of which is the value of that part of the gross estate that has its taxable situs in ~~over which the District has jurisdiction for estate tax purposes~~ and the denominator of which is the value of the decedent's gross estate.

~~(c) For the purpose of this section, taxable situs means in regard to:~~

~~(1) Real property — the place where the property is situated;~~

~~(2) Tangible personal property — the place where the property is customarily located at the time of the decedent's death; and~~

~~(3) Intangible personal property — the domicile of the decedent at the time of the decedent's death, except that intangible personal property used in a trade or business in the District shall have a taxable situs in the District regardless of the domicile of the owner.~~

§ 47-3704. Authority for Mayor to compromise tax.

In all cases in which the Mayor claims that a decedent was domiciled in the District at the time of his or her death and the taxing authorities of a state or states make a similar claim with respect to their state or states, the Mayor may compromise the taxes imposed by this chapter.

§ 47-3705. Filing returns; payment of tax due.

(a)(1) The personal representative of every estate subject to the tax imposed by this chapter shall file with the Mayor, within 10 months after the death of the decedent:

(A) A return for the tax due under this chapter; and

(B) A copy of the federal estate tax return, if any. (2) A

(2) A return shall not be required to be filed:

(A) For a decedent whose death occurs on or after January 1, 2002, but prior to January 1, 2003, if the gross estate does not exceed \$675,000.

(B) For a decedent whose death occurs on or after January 1, 2003, if the gross estate does not exceed \$1 million.

(b) If the personal representative has obtained an extension of time for filing the federal estate tax return, the filing required by subsection (a) of this section shall be similarly extended until 30 days after the end of the time period granted in the extension of time for the federal estate tax return. Upon obtaining an extension of time for filing the federal estate tax return, the personal representative shall provide the Mayor with a copy of the extension of time.

(c) In the event that any portion of the federal transfer tax is deferred or to be paid in installments under the provisions of the Internal Revenue Code, the portion of the DC estate tax that is subject to deferral or payable in installments shall be determined by multiplying the DC estate tax by a fraction, the numerator of which is the gross value of the assets included in the transferred property having a taxable situs in the District of Columbia and which give rise to the deferred or installment payment under the Internal revenue Code, and the denominator of which is the gross value of all assets included in the transferred property having a taxable situs in the District of Columbia. Deferred payments and installment payments, with interest, shall be paid at the same time and in the same manner as payments of the federal transfer tax are required to be made under the applicable Sections of the Internal Revenue Code, provided that the rate of interest on unpaid amounts of DC estate tax shall be determined under this chapter. Acceleration of payment under this chapter shall occur under the same circumstances and in the same manner as provided in the Internal Revenue Code.

(d) The Mayor may, for reasonable cause, extend the time for payment of the amount of the tax shown, or required to be shown, on any return required under this chapter (or any installment thereof), for a reasonable period not to exceed 12 months.

(e) The tax due under this chapter shall be paid by the personal representative to the Mayor no later than the date when the return covering this tax is required to be filed under subsection (a) or (b) of this section, or no later than the date when a deferred or installment payment is due as described in subsection (c) or (d) of this section.

(f) Whenever the Mayor determines that the tax due under this chapter has been overpaid, the estate shall be entitled to a refund of the amount of the overpayment. An application for the refund shall be made to the Mayor within 3 years from the date of payment.

§ 47-3706. Jeopardy assessments. [Repealed]

§ 47-3707. Authority for Mayor to file.

If a person fails to make and file a return at the time prescribed by the law or by regulations, or makes, willfully or otherwise, a false or fraudulent return, the Mayor shall make the return from his own knowledge and from information obtained through testimony or otherwise. The return made and subscribed by the Mayor shall be prima facie good and sufficient for all legal purposes.

§ 47-3708. Amended returns.

(a) If the personal representative files an amended federal estate tax return, he or she shall, within 30 days after filing the amended federal estate tax return, file with the Mayor an amended return covering the tax imposed by this chapter, accompanying the amended return with a copy of the amended federal estate tax return. If the personal representative is required to pay an additional tax under this chapter pursuant to the amended return, he or she shall pay the tax, together with interest in accordance with § 47-4201.01 at the time of filing the amended return.

(b) If, upon final determination of the federal estate tax due, a deficiency is assessed, the personal representative shall within 30 days after this determination give written notice of the deficiency to the Mayor. If any additional tax is due under this chapter by reason of this determination, the personal representative shall pay the additional tax, together with interest in accordance with § 47-4201.01 at the time of filing the notice.

§ 47-3709. Testimony; production of books and records. [Repealed]

§ 47-3710. Certification of payment by Mayor.

When the Mayor is satisfied that the tax liability imposed by this chapter has been fully discharged or provided for, the Mayor may certify that fact.

§ 47-3711. Lien for taxes. [Repealed]

§ 47-3712. Liability of personal representative.

The tax, interest, and penalties imposed by this chapter shall be paid by the personal representative. If any personal representative distributes either in whole or in part any of the property of an estate to the beneficiaries or creditors without having paid or secured the tax, interest, or penalties due pursuant to this chapter, he or she shall be personally liable for the tax, interest, and penalties so due, or so much of the tax, interest, and penalties as may remain due and unpaid, to the full extent of any property belonging to the person or estate that may have or will come into his or her custody or control.

§ 47-3713. Duty of personal representative.

The personal representative of every decedent subject to the tax imposed by this chapter shall, before distribution of the estate, pay to the Mayor any taxes, penalties, and interest due under this chapter. The taxes, penalties, and interest shall be paid by the personal representative to the extent of assets subject to his or her control. Each payment shall be applied, first, to any interest due on the tax, second, to any penalty imposed by this chapter, and then the balance, if any, to the tax.

§ 47-3714. Apportionment required.

(a) Except as may be otherwise provided in the decedent's will, whenever it appears upon any settlement of accounts or in any other appropriate action or proceeding that a person acting in a fiduciary capacity has paid an estate tax levied or assessed under the provisions of the estate tax law of the District or the United States upon or with respect to any property required to be included in the gross estate of a decedent under the provisions of either law, the amount of the tax so paid shall be prorated among the persons interested in the estate to whom the property is or may be transferred or to whom any benefit accrues. Apportionment shall be made in the proportion that the value of the property, interest, or benefit of each person bears to the total value of the property, interests, and benefits received by all persons interested in the estate, except that in making proration each person shall have the benefit of any exemptions, deductions, and exclusions allowed by law in respect of the persons or the property passing to him or her.

(b) Notwithstanding subsection (a) of this section, in cases in which a trust is created or other provisions made in which any person is given an interest in income, an estate for years, an estate for life, or other temporary interest or estate in any property or fund, the tax on the temporary interest or estate shall be charged against and paid out of the corpus of that property or fund without apportionment between temporary interests or estates and remainders.

(c) If any part of the estate consists of property the value of which is deemed includible in the estate under section 47-3702(b)14), the amount of DC estate tax apportioned to the person or persons receiving that property shall be the amount by which the total DC estate tax that has been paid exceeds the total DC estate tax that would have been payable if the value of that property had not been deemed includible in the estate. [NOTE: from MD law]

§ 47-3715. Monthly report of Register of Wills.

The Register of Wills shall report to the Mayor on every order appointing a personal representative in the District for the estate of any decedent. The report shall be in a form prepared by the Register of Wills, shall be filed with the Mayor at least once every month, and shall contain the name of the decedent, the date of his or her death, the name and address of the personal representative, and the value of the estate, as shown by the petition for probate.

§ 47-3716. Final account.

No final account in any probate proceeding of a personal representative who is required to file a federal estate tax return shall be approved by the court unless the court finds that the tax imposed on the property by this chapter, including applicable interest, has been paid in full or that no tax is due.

§ 47-3717. Authority of Mayor to determine tax; deficiencies in tax.

(a) The Mayor shall have the authority to determine, redetermine, assess, or reassess any tax due under this chapter. Assessments of any deficiencies in the tax due under this chapter, or any interest and penalties thereon, shall be governed by § 47-4312.

(b) Any assessment of tax, penalties, and interest that has become final pursuant to § 47-4312 shall be due and payable within 10 days after service of a final assessment by the Mayor or service of a final order by the Office of Administrative Hearings, as applicable.

(c) Except as provided in § 47-4312, any person aggrieved by an assessment of a deficiency in tax under the provisions of this section may appeal to the Superior Court of the District of Columbia in the same manner and to the same extent as set forth in §§ 47-3303, 47-3304, and 47-3308.

§ 47-3718. Penalties. [Repealed]

§ 47-3719. Secrecy of returns.

(a) Except as may be necessary for the enforcement of this chapter, it shall be unlawful for any officer or employee, or any former officer or employee, of the District to divulge or make known in any manner any particulars set forth or disclosed in any return required to be filed under this chapter, and neither the original nor a copy of any return desired for use in litigation in court shall be furnished where neither the District nor the United States is interested in the result of the litigation, whether or not the request is contained in an order of the court.

(b) Nothing contained in this section shall be construed to prevent the furnishing to a taxpayer of a copy of his or her return upon the payment of a fee as the Mayor may prescribe by rule.

(c) The provisions of this section shall also be applicable to any federal, state, or local inheritance or estate tax returns or copies and to any other federal, state, or local inheritance or estate tax information either submitted by the taxpayer or otherwise obtained.

(d) Notwithstanding the provisions of subsection (a) of this section, any tax returns or other tax information required by this chapter may be disclosed to any official of the District having a right to the information in his or her official capacity or to a contractor to the extent necessary for the processing, storage, transmission, or reproduction of the tax information or for the programming, maintenance, repair, testing, and procurement of equipment for purposes of tax administration. The provisions of subsections (a) and (f) of this section shall be applicable to all contractors and former contractors and to their officers and employees.

(e) The Mayor may permit the proper officer of the United States or of any state imposing a similar tax to inspect the tax returns filed with the Mayor pursuant to this chapter or may furnish the officer or representative a copy of the tax returns if the United States or the state grants substantially similar privileges to the Mayor.

(f) Any violation of the provisions of this section shall be a misdemeanor and, upon conviction, shall be punishable by a fine not to exceed \$1,000, imprisonment for not more than 1 year, or both. All prosecutions under this section shall be brought in the Superior Court of the District of Columbia on information by the Attorney General for the District of Columbia or his or her assistants in the name of the District of Columbia.

§ 47-3720. Rules.

The Mayor shall issue rules necessary to carry out the provisions of this chapter and to provide for the granting of extensions of time within which to perform the duties imposed by this chapter, in accordance with subchapter I of Chapter 5 of Title 2.

§ 47-3721. Report by Mayor concerning amendment, repeal, or replacement of Internal Revenue Code of 1954.

Within 90 days after any amendment, repeal, or replacement of the Internal Revenue Code of 1954, the Mayor shall report to the Council concerning the amendment, repeal, or replacement. The reports shall include, but not be limited to, an analysis of the impact of conformity to the amendment, repeal, or replacement on District taxpayers, and on District of Columbia government revenues over the next 5-year period, and a recommendation as to whether any change in District law should be made as a result of the amendment, repeal, or replacement.

47-3722. Effect of repeaters.

(a) The repeal by this act of any provision of law shall not affect any act done or any right accrued or accruing under the provision of law before April 1, 1987, or any suit or proceeding had or commenced before April 1, 1987, but all rights and liabilities under prior law shall continue and may be enforced in the same manner and to the same extent as if the repeal had not been made.

(b) All offenses committed, and all penalties incurred prior to April 1, 1987, under any provision of law repealed, may be prosecuted and punished in the same manner and with the same effect as if this chapter had not been enacted.

§ 47-3723. Applicability.

The tax imposed by this chapter shall apply to the estates of decedents dying after March 31, 1987.

INSTRUCTIONS - SECTIONS I - III OF DC-76
For estates of decedents dying after December 31, 2007

Indicate whether the return is an "original" filing or an "amended" return and whether alternate valuation is elected. Also indicate in the check box if the federal return, Form 706, has been or will be filed with the Internal Revenue Service.

Section I Complete *all* of the information concerning the decedent.

Section II Enter the information concerning all person(s) responsible for filing the return.

Enter the information to indicate where correspondence should be sent. This is the individual the Audit Division will contact if additional information is required or if a deficiency/refund notice is necessary. The person(s) responsible for filing the return will be contacted in the event the contact person does not respond or if no contact person is listed. **All person(s) responsible for filing the return must sign and date the return.**

Section III Computation of DC estate tax for estates of decedents dying after December 31, 2007. Complete the federal estate tax return, Form 706, for the year of the decedent's death, regardless of whether Form 706 is required to be filed with the Internal Revenue Service.

Include the federal return, complete with all schedules, attachments and supporting documents when filing the DC estate tax return.

Note that the DC estate tax is computed with regard to the federal taxable estate, which now is calculated after a deduction for the DC estate tax. This results in an inter-related computation of the DC estate tax and corresponding deduction on the federal estate tax return. The amounts on lines 3a and 5 of the federal Form 706 without the state death tax deduction on line 3b of the federal Form 706 will be needed to compute the DC estate tax. Please consult the website (www.) for a computer program that will assist you in making this computation.

Line 2 Complete Schedule C and enter the value, as of the decedent's date of death (or alternate valuation date, if elected), of DC Qualified Terminable Interest Property (QTIP) for which an election was previously made on a DC estate tax return filed for the estate of the decedent's predeceased spouse. Do not include QTIP property that is already included in line 1.

Line 5 To make the computation of the federal deduction for state death taxes, the amounts of the tentative taxable estate from line 3a, federal Form 706, and the taxable estate with adjusted gifts from line 5, Form 706, without the state death tax deduction are required. Please consult the website, as indicated above, for further information.

Line 6 If an election for DC Qualified Terminable Interest Property (QTIP) is being made in the current return, complete Schedule D and enter the total amount of DC QTIP on line 6 of the DC estate tax return.

Note: Schedule D of the D-76 is the only place to make a DC QTIP election; Do not attempt to make a DC QTIP election on the pro forma Schedule M of federal Form 706 will not be effective. All DC QTIP elections must be made on Schedule D of the D-76.

[If an estate which makes a QTIP election on a federally filed return wishes to decrease the amount of that election for DC estate tax purposes, please explain in an attachment filed with the return. [Nancy trying to determine why MD included this paragraph]

Line 10-11 Apportionment of DC estate tax.

If the ~~augmented~~total gross estate on line 3 includes only DC property, skip to line 12. If the ~~augmented~~total gross estate on line 3 includes DC property and property located outside DC, complete DC Schedule A first. Then enter on line 10, the percentage of the DC estate from line 22 on Schedule A. Multiply line 10 times line 9 and enter the result on line 11.

Line 12 If the total~~augmented~~ gross estate includes only DC property, enter line 9. If the ~~augmented~~total gross estate includes property in DC and outside DC, enter the lesser of line 9 or 11. The amount reported on line 12 is the gross DC estate tax liability. This amount must be satisfied by the due date of the return shown on page 1 to avoid interest and penalty.

Line 13a Enter the total of any payments ~~remitted~~made as estimated payments with a filing extension or payments ~~remitted~~made in advance of the filing of the return.

Line 13b Enter the total DC estate tax paid with previously filed returns.

Line 15 Interest is assessed on any portion of the DC estate tax liability (line 12) that is not satisfied by the statutory due date on page 1 of the return. Interest is charged at the rate of 10% per year, compounded daily (without regard to any extension), from the due date to the date of payment.

Line 16 Late payment penalty of 5% per month or fraction of a month up to a maximum of 25% of the tax is assessable on any portion of the DC estate tax (line 12) that is not satisfied by the statutory due date on page 1 of the return, or for failure to timely file a return.

Line 17-19 Add lines 14, 15 and 16 and enter the total on line 17~~6~~. If the total is a balance due, enter amount on line 19 and remit~~pay~~ with the remittance advice form Form D-76. If the total is an overpayment, enter amount to be refunded on line 18, ~~the amount refundable~~. This may not exceed the total amount previously paid.

SCHEDULE B

Use this schedule and worksheet to complete line 9 of the DC estate tax return if the decedent died after December 31, 2007

- 1. DC estate tax base (from line 8 Section III of the DC Estate Tax Return) \$ _____
- 2. Less \$60,000 adjustment..... \$(60,000.00)
- 3. Adjusted taxable estate (subtract line 2 from line 1) \$ _____

Complete lines 4-6 using Table A below to determine the DC estate taxes.

Table A -- Computation of DC Estate Tax

(1) Adjusted taxable estate equal to or more than --	(2) Adjusted taxable estate less than --	(3) Credit on amount in column (1)	(4) Rate of credit on excess over amount in column (1) (Percent)	(1) Adjusted taxable estate equal to or more than	(2) Adjusted taxable estate less than	(3) Credit on amount in column (1)	(4) Rate of credit on excess over amount in column (1)
0	\$40,000	0	None	2,040,000	2,540,000	106,800	8.0
\$40,000	90,000	0	0.8	2,540,000	3,040,000	146,800	8.8
90,000	140,000	\$400	1.6	3,040,000	3,540,000	190,800	9.6
140,000	240,000	1,200	2.4	3,540,000	4,040,000	238,800	10.4
240,000	440,000	3,600	3.2	4,040,000	5,040,000	290,800	11.2
440,000	640,000	10,000	4.0	5,040,000	6,040,000	402,800	12.0
640,000	840,000	18,000	4.8	6,040,000	7,040,000	522,800	12.8
840,000	1,040,000	27,600	5.6	7,040,000	8,040,000	650,800	13.6
1,040,000	1,540,000	38,800	6.4	8,040,000	9,040,000	786,800	14.4
1,540,000	2,040,000	70,800	7.2	9,040,000	10,040,000	930,800	15.2
				10,040,000	-----	1,082,800	16.0

- 4. Maximum DC estate taxes. Calculate using Table B above and the Adjusted Taxable Estate on line 3 of Schedule B and enter here \$ _____
- 5. Allowable credit from DC estate taxes of \$33,200. \$ (33,200)
- 6. Subtract line 5 from line 4. Enter on line 9 of the DC Estate Tax Return. ... \$ _____

SCHEDULE D

Use this schedule and worksheet to make certain elections and to complete line 6 of the DC estate tax return ~~if the decedent died after December 31, 2007.~~

All DC QTIP ~~qualified Terminable Interest Property~~ elections must be made on this Schedule D. Do not attempt to make a DC QTIP election on the pro forma Form 706.

Election To Deduct Qualified Terminable Interest Property For DC Estate Tax Purposes.

If a trust (or other property) meets the requirements of qualified terminable interest property under Internal Revenue Code §2056(b)(7) (without regard to the citizenship of the surviving spouse and other than the requirement that the election with respect to such property shall be made on a federal Form 706) and

- a. The trust or other property is listed on this Schedule D, and
- b. The value of the trust (or other property) is entered in whole or in part as a deduction on this Schedule D then unless the personal representative specifically identifies the trust (all or a fractional portion or percentage) or other property to be excluded from the election, the personal representative irrevocably elects to have such trust (or other property) treated as qualified terminable interest property under § 47-3702(b)(3) of the DC Code. If less than the entire value of the trust (or other property) that the executor has included in the gross estate is entered as a deduction in this Schedule D, the personal representative shall be considered to have made an election only as to a fraction of the trust (or other property). The numerator of this fraction is equal to the amount of the trust (or other property) deducted in this Schedule D. The denominator is equal to the total value of the trust (or other property).
- c. Under § 47-3702(b)(3) of the DC Code, an election to treat property as marital deduction qualified terminable interest property on a timely filed DC Estate Tax Return shall be recognized for purposes of calculating the DC estate tax even if an inconsistent election is made for the same decedent for Federal estate tax purposes.
- d. For each item of qualified terminable interest property entered below, attach a copy of the trust document (if applicable) and ~~the appraisal of the value of such property.~~

Identify below each trust to which this irrevocable election applies:

A. _____
 Name of Trust (or other property)

Tax Identification Number of Trust

Name of Decedent's Spouse SSN

Name and address of Trustee(s) of Trust

If this election applies to an additional trust or trusts, attach a continuation schedule or additional sheets identifying each additional trust or property to which this election applies.

Item Letter	Description of DC Qualified Terminable Interest Property	Amount (Fair Market Value)
1.	TOTAL AMOUNT of Qualified Terminable Interest Property listed above that is not listed in Schedule M of the federal Form 706. (enter on Line 6, Section III of the DC Estate Tax Return)	\$ _____

**DC Estate Tax Return
FORM D-76**

DRAFT 5-02-08

**Office of Tax and Revenue
Audit Division
Estate Tax Unit
P.O. Box 556
Washington, DC 20044-0556
www._____**

To be used for decedents dying after December 31, 2007

Please print or type

Attach Federal Estate Tax Return, Form 706

(or, if not required to file Form 706 with the Internal Revenue Service, attach a pro forma Form 706)

SECTION I Original return Amended return Alternate Valuation Federal estate tax return has been or will be filed with the IRS

Decedent information:

First name Middle name Last name Social Security number

Address at date of death (number and street)

City County State Zip Code

Date of death Due date of return (ten months after date of death) Extended due date of return (Attach copy of extension)

Person(s) responsible for filing the DC estate tax return:

Attach continuing schedule in same format, including signature, if there are more than three persons responsible for filing the return.

Name Complete mailing address Social Security number

Name Complete mailing address Social Security number

Name Complete mailing address Social Security number

Attorney or contact person where correspondence should be sent:

Name Phone number

Address line 1

Address line 2

City County State Zip Code

Affidavit of person(s) responsible for filing the DC estate tax return:

Under the penalties of perjury, I certify that I have examined this return, including schedules and the federal Form 706, and that these documents are true, correct and complete to the best of my knowledge, information and belief.

Signature Date Signature Date

Signature Date

Decedent information:

First name	Middle name	Last name	Social Security number
------------	-------------	-----------	------------------------

**COMPUTATION OF DC ESTATE TAX
for estates of decedents dying after December 31, 2007**

Do not write in this area
Audit Div. use only

- | | | |
|---|-------|--|
| 1. Federal gross estate (from line 1, federal Form 706) | _____ | |
| 2. Property for which a QTIP election was previously made on a form D-76 filed for the estate of the decedent's predeceased spouse (to the extent not included in line 1) (from line 1 of Schedule C) | _____ | |
| 3. Total gross estate (add lines 1 and 2) | _____ | |
| 4. Federal allowable deductions (from line 2, federal Form 706) | _____ | |
| 5. Federal deduction for state death taxes (from line 3b, federal Form 706) | _____ | |
| 6. DC QTIP election this return (from line 1 of Schedule D) | _____ | |
| 7. Total deductions (add lines 4 through 6) | _____ | |
| 8. DC estate tax base (subtract line 7 from line 3). Do not enter less than zero | _____ | |

**COMPLETE AND ATTACH DC SCHEDULE B
FOR LINE 9**

- | | | |
|---|-------|--|
| 9. Tentative DC estate tax (from line 15 of Schedule B) | _____ | |
|---|-------|--|

**IF LINE 9 IS ZERO, OR IF ALL PROPERTY WITHIN THE TOTAL GROSS
ESTATE HAS A DC TAX SITUS, SKIP TO LINE 12**

- | | | | | | | | | | | | | |
|---|---|--|--|--|--|--|---|--|--|--|--|--|
| 10. DC estate to total gross estate (Schedule A, line 22) % | <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 20px;"></td> </tr> </table> | | | | | | % | <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 20px;"></td> </tr> </table> | | | | |
| | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| 11. DC apportioned tax (line 10 times line 9) | _____ | | | | | | | | | | | |
| 12. DC estate tax liability
(enter the lesser of lines 9 and 11, whichever is applicable) | _____ | | | | | | | | | | | |
| 13. a. Estimated tax previously paid | _____ | | | | | | | | | | | |
| b. DC estate tax previously paid (amended returns only) | _____ | | | | | | | | | | | |
| c. Total (add lines 13a and 13b) | _____ | | | | | | | | | | | |
| 14. DC estate tax due or (overpayment) (line 12 minus line 13c) | _____ | | | | | | | | | | | |
| 15. Interest charges | _____ | | | | | | | | | | | |
| 16. Penalty charges | _____ | | | | | | | | | | | |
| 17. Total balance due or (overpayment) (add lines 14, 15, and 16) | _____ | | | | | | | | | | | |
| 18. Amount of overpayment to be refunded REFUND | _____ | | | | | | | | | | | |
| 19. Total balance due Pay in full when filing this return | _____ | | | | | | | | | | | |

SECTION III

INSTRUCTIONS - SECTIONS I - III OF DC-76
For estates of decedents dying after December 31, 2007

Indicate whether the return is an "original" filing or an "amended" return and whether alternate valuation is elected. Also indicate in the check box if the federal return, Form 706, has been or will be filed with the Internal Revenue Service.

Section I Complete *all* of the information concerning the decedent.

Section II Enter the information concerning all person(s) responsible for filing the return.

Enter the information to indicate where correspondence should be sent. This is the individual the Audit Division will contact if additional information is required or if a deficiency/refund notice is necessary. The person(s) responsible for filing the return will be contacted in the event the contact person does not respond or if no contact person is listed. **All person(s) responsible for filing the return must sign and date the return.**

Section III Computation of DC estate tax for estates of decedents dying after December 31, 2007. Complete the federal estate tax return, Form 706, for the year of the decedent's death, regardless of whether Form 706 is required to be filed with the Internal Revenue Service.

Include the federal return, complete with all schedules, attachments and supporting documents when filing the DC estate tax return.

Note that the DC estate tax is computed with regard to the federal taxable estate, which now is calculated after a deduction for the DC estate tax. This results in an inter-related computation of the DC estate tax and corresponding deduction on the federal estate tax return. The amounts on lines 3a and 5 of the federal Form 706 without the state death tax deduction on line 3b of the federal Form 706 will be needed to compute the DC estate tax. Please consult the website (www.irs.gov) for a computer program that will assist you in making this computation.

Line 2 Complete Schedule C and enter the value, as of the decedent's date of death (or alternate valuation date, if elected), of DC Qualified Terminable Interest Property (QTIP) for which an election was previously made on a DC estate tax return filed for the estate of the decedent's predeceased spouse. Do not include QTIP property that is already included in line 1.

Line 5 To make the computation of the federal deduction for state death taxes, the amounts of the tentative taxable estate from line 3a, federal Form 706, and the taxable estate with adjusted gifts from line 5, Form 706, without the state death tax deduction are required. Please consult the website, as indicated above, for further information.

Line 6 If an election for DC Qualified Terminable Interest Property (QTIP) is being made in the current return, complete Schedule D and enter the total amount of DC QTIP on line 6 of the DC estate tax return.

Note: Schedule D of the D-76 is the only place to make a DC QTIP election; a DC QTIP election on the pro forma Schedule M of federal Form 706 will not be effective.

[If an estate which makes a QTIP election on a federally filed return wishes to decrease the amount of that election for DC estate tax purposes, please explain in an attachment filed with the return. [Nancy trying to determine why MD included this paragraph]

Line 10-11 Apportionment of DC estate tax.

If the total gross estate on line 3 includes only DC property, skip to line 12. If the total gross estate on line 3 includes DC property and property located outside DC, complete DC Schedule A first. Then enter on line 10, the percentage of the DC estate from line 22 on Schedule A. Multiply line 10 times line 9 and enter the result on line 11.

- Line 12** If the total gross estate includes only DC property, enter line 9. If the total gross estate includes property in DC and outside DC, enter the lesser of line 9 or 11. The amount reported on line 12 is the gross DC estate tax liability. This amount must be satisfied by the due date of the return shown on page 1 to avoid interest and penalty.
- Line 13a** Enter the total of any payments made as estimated payments with a filing extension or payments made in advance of the filing of the return.
- Line 13b** Enter the total DC estate tax paid with previously filed returns.
- Line 15** Interest is assessed on any portion of the DC estate tax liability (line 12) that is not satisfied by the statutory due date on page 1 of the return. Interest is charged at the rate of 10% per year, compounded daily (without regard to any extension), from the due date to the date of payment.
- Line 16** Late payment penalty of 5% per month or fraction of a month up to a maximum of 25% of the tax is assessable on any portion of the DC estate tax (line 12) that is not satisfied by the statutory due date on page 1 of the return, or for failure to timely file a return.
- Line 17-19** Add lines 14, 15 and 16 and enter the total on line 17. If the total is a balance due, enter amount on line 19 and pay with the Form D-76. If the total is an overpayment, enter amount to be refunded on line 18.

Decedent information:

First name	Middle name	Last name	Social Security number
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SCHEDULE A

Use this worksheet to report the portion of the estate not subject to DC estate tax
Attach Schedule A to Form DC-76, using additional pages if necessary.

For a DC decedent – Itemize the Real and Tangible Personal Property included in the total gross estate (line 3 of the DC Estate Tax Return), having situs outside of DC.

For a nonresident decedent – Itemize the Real and Tangible Personal Property included in the total gross estate (line 3 of the DC Estate Tax Return), having situs in DC.

Item	Property description and location	Value used in total gross estate
	Total from additional pages	

18. Total _____
- Computation of DC estate as a percentage of total gross estate**
19. Total gross estate (from line 3) _____
20. Portion of estate not subject to DC estate tax: _____
- a. DC decedent (from line 18) _____
- OR
- b. Nonresident decedent (line 19 minus line 18) _____
21. DC estate (subtract line 20a or 20b from line 19) _____
22. DC estate as percentage of total gross estate (line 21 divided by line 19) rounded to two decimal places. Enter on line 10 of return %

SCHEDULE B

Use this schedule and worksheet to complete line 9 of the DC estate tax return

1. DC estate tax base (from line 8 Section III of the DC Estate Tax Return)..... \$ _____
2. Less \$60,000 adjustment..... \$(60,000.00) _____
3. Adjusted taxable estate (subtract line 2 from line 1)..... \$ _____

Complete lines 4-6 using Table A below to determine the DC estate tax.

Table A -- Computation of DC Estate Tax

(1) Adjusted taxable estate equal to or more than --	(2) Adjusted taxable estate less than --	(3) Credit on amount in column (1)	(4) Rate of credit on excess over amount in column (1) (Percent)	(1) Adjusted taxable estate equal to or more than	(2) Adjusted taxable estate less than	(3) Credit on amount in column (1)	(4) Rate of credit on excess over amount in column (1)
0	\$40,000	0	None	2,040,000	2,540,000	106,800	8.0
\$40,000	90,000	0	0.8	2,540,000	3,040,000	146,800	8.8
90,000	140,000	\$400	1.6	3,040,000	3,540,000	190,800	9.6
140,000	240,000	1,200	2.4	3,540,000	4,040,000	238,800	10.4
240,000	440,000	3,600	3.2	4,040,000	5,040,000	290,800	11.2
440,000	640,000	10,000	4.0	5,040,000	6,040,000	402,800	12.0
640,000	840,000	18,000	4.8	6,040,000	7,040,000	522,800	12.8
840,000	1,040,000	27,600	5.6	7,040,000	8,040,000	650,800	13.6
1,040,000	1,540,000	38,800	6.4	8,040,000	9,040,000	786,800	14.4
1,540,000	2,040,000	70,800	7.2	9,040,000	10,040,000	930,800	15.2
				10,040,000	-----	1,082,800	16.0

4. Maximum DC estate tax. Calculate using Table B above and the **Adjusted Taxable Estate** on line 3 of Schedule B and enter here \$ _____
5. Allowable credit from DC estate taxes of \$33,200. \$ (33,200) _____
6. Subtract line 5 from line 4. Enter on line 9 of the DC Estate Tax Return..... \$ _____

SCHEDULE C

Use this schedule and worksheet to complete line 2 of the DC Estate Tax Return and to report any DC QTIP trust property for which an election was made on the decedent's predeceased spouse's DC estate tax return, if applicable

The DC QTIP Trust referred to on this Schedule C is the trust (or other property) for which a DC QTIP election was made on a prior DC estate tax return filed by the estate of the decedent's predeceased spouse. If the assets of the DC QTIP Trust are not included on the decedent's federal estate tax return (Form 706) because these assets were not subject to a federal QTIP election and thus are not includible in the decedent's federal gross estate, then the fair market value of such assets must be reported and included on this Schedule C. For each item of QTIP property entered below, attach a copy of the trust document (if applicable) and an appraisal of the fair market value of such property.

Identify below each trust to which this irrevocable election applies:

A.

Name of Trust (or other property)

Tax Identification Number of Trust

Name of Decedent's former Spouse

_____ SSN
Date of Death of Decedent's former Spouse

Name and address of Trustee(s) of Trust

If this election applies to an additional trust or trusts, attach a continuation schedule or additional sheets identifying each additional trust or property to which this election applies.

Item Letter	Description of DC Qualified Terminable Interest Property	Amount (Fair Market Value)
-------------	--	-------------------------------

1. TOTAL (include on Line 2, Section III of DC estate tax return) \$ _____

SCHEDULE D

Use this schedule and worksheet to make certain elections and to complete line 6 of the DC estate tax return.

**All DC QTIP elections must be made on this Schedule D.
Do not attempt to make a DC QTIP election on the pro forma Form 706.**

Election To Deduct Qualified Terminable Interest Property For DC Estate Tax Purposes.

If a trust (or other property) meets the requirements of qualified terminable interest property under Internal Revenue Code §2056(b)(7) (without regard to the citizenship of the surviving spouse and other than the requirement that the election with respect to such property shall be made on a federal Form 706) and

- a. The trust or other property is listed on this Schedule D, and
- b. The value of the trust (or other property) is entered in whole or in part as a deduction on this Schedule D then unless the personal representative specifically identifies the trust (all or a fractional portion or percentage) or other property to be excluded from the election, the personal representative irrevocably elects to have such trust (or other property) treated as qualified terminable interest property under § 47-3702(b)(3) of the DC Code. If less than the entire value of the trust (or other property) that the executor has included in the gross estate is entered as a deduction in this Schedule D, the personal representative shall be considered to have made an election only as to a fraction of the trust (or other property). The numerator of this fraction is equal to the amount of the trust (or other property) deducted in this Schedule D. The denominator is equal to the total value of the trust (or other property).
- c. Under § 47-3702(b)(3) of the DC Code, an election to treat property as marital deduction qualified terminable interest property on a timely filed DC Estate Tax Return shall be recognized for purposes of calculating the DC estate tax even if an inconsistent election is made for the same decedent for Federal estate tax purposes.
- d. For each item of qualified terminable interest property entered below, attach a copy of the trust document (if applicable) and the value of such property.

Identify below each trust to which this irrevocable election applies:

A.

Name of Trust (or other property)

Tax Identification Number of Trust

Name of Decedent's Spouse

SSN

Name and address of Trustee(s) of Trust

If this election applies to an additional trust or trusts, attach a continuation schedule or additional sheets identifying each additional trust or property to which this election applies.

Item	Letter	Description of DC Qualified Terminable Interest Property	Amount (Fair Market Value)
------	--------	--	-------------------------------

1. TOTAL AMOUNT of Qualified Terminable Interest Property listed above that is not listed in Schedule M of the federal Form 706. (enter on Line 6, Section III of the DC Estate Tax Return)

\$ _____

GENERAL INSTRUCTIONS

For estates of decedents dying after December 31, 2007

When the Form DC 76 must be filed: A DC estate tax return (Form DC-76) must be filed where the federal gross estate equals or exceeds \$1,000,000 or more, and the decedent at the date of death was:

1. A resident of the District of Columbia
2. A nonresident of the District of Columbia whose estate includes any interest in real property permanently located in District of Columbia; or tangible personal property that has a taxable situs in DC.

The DC estate tax return must be filed within ten months after the date of death of the decedent, even if the federal estate tax return (IRS Form 706) is not required to be filed with the Internal Revenue Service.

Who must file Form DC-76: The duly appointed personal representative shall file the return. If there is more than one personal representative, the return must be made jointly by all. If there is no personal representative appointed, every person in actual or constructive possession of any property of the decedent is required to make and file a return.

Where to file return: The DC estate tax return and payments must be mailed to the Office of Tax and Revenue, Audit Division, Estate Tax Unit, P.O. Box 556, Washington, DC 20044-0556. Make the check or money order payable to the DC Treasurer.

What to include with the return: When filing the DC estate tax return, include DC Schedule A if applicable, DC Schedule B, DC Schedule C if applicable, DC Schedule D if applicable, and the federal estate tax return, Form 706, including schedules, attachments and supporting documents.

Note: If you are not required to file a federal estate tax return but are required to file a DC estate tax return, attach a copy of the pro forma federal Form 706 prepared, with schedules and supporting documentation, as though a federal return was required.

Alternate Valuation: With regard to an election to value property as provided in §2032 of the Internal Revenue Code, if a federal estate tax return is not required to be filed with the Internal Revenue Service, an irrevocable election made on a timely filed DC estate tax return shall be deemed to be an election as required by §2032(d) of the Internal Revenue Code. In such cases, the provisions of §2032(c) of the Internal Revenue Code do not apply. An election may not be made unless that election will decrease the value of the gross estate, and the DC estate tax due with regard to the transfer of a decedent's DC estate. Report an election for alternate valuation of property by entering a check mark in the appropriate box on the front page of the DC estate tax return, and by reporting the same on the pro forma Form 706 filed with the D-76. You must attach all of the required statements and appraisals. In cases in which a federal estate tax return is filed with the Internal Revenue Service, an election for alternate valuation of property for DC estate tax purposes must be the same as the election made for federal estate tax purposes.

Extension of time to file: Generally, the District of Columbia estate tax return must be filed and the tax paid within 10 months after the death of the decedent. However, a 6-month extension of time to file may be requested by filing a DC Application for Extension of Time to File (Form FR-77). The Office of Tax and Revenue may not accept the federal Form 4768, Application for Extension of time to File a Return and/or Pay U.S. Estate Taxes. **YOU MUST USE ONLY FORM FR-77.**

Interest, Penalties and Liens: Beginning January 1, 2003, interest is charged at the rate of 10% per year, compounded daily (without regard to any extension). A penalty of 5% per month or any fraction of a month up to a maximum of 25% of the tax will be imposed upon the failure to timely file a return and/or upon the failure to timely pay the tax. This penalty applies without regard to any extension of time in filing the return.

Reporting of Adjustments: After a DC estate tax return has been filed, an amended DC estate tax return (Form D-76) shall be filed if the DC estate tax liability is increased because of:

1. a change in the federal gross estate, federal taxable estate, federal estate tax, or other change as determined under the Internal Revenue Code;
2. after-discovered property;

3. a correction to the value of previously reported property;
4. a correction to the amount of previously claimed deductions; or
5. any other correction to a previously filed return.

The amended return shall be filed within 90 days after the later to occur of the date of the event that caused the increase in the DC estate tax liability or the date on which the person required to file an amended DC estate tax return learned or reasonably should have learned of the increase in the DC estate tax liability. Any additional tax, interest and penalties determined to be due shall be paid to DC at the same time the amended return is filed.

Refund of Excess Payment: If an adjustment results in a decrease in the DC estate tax, the person responsible for filing the DC estate tax return shall file an amended return (Form D-76) to claim a refund of previously paid DC estate tax. Claims shall be supported with appropriate documentation to support the claim.

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1. A resident of the District of Columbia
2. A nonresident of the District of Columbia whose estate includes any interest in real property permanently located in District of Columbia; or tangible personal property that has a taxable situs in DC.

The DC estate tax return must be filed within ten months after the date of death of the decedent, even if the federal estate tax return (IRS Form 706) is not required to be filed with the Internal Revenue Service.

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