

Vermont Tax Seminar

December 8, 2016

Mark A. Langan, Esq.
Dinse Knapp & McAndrew, PC
209 Battery Street, PO Box 988
Burlington, VT 05402

802-864-5751

mlangan@dinse.com

www.dinse.com

ESTATE TAX—RULES AND REGULATIONS, 2016 Vermont Laws No. 146 (S. 55)

2016 Vermont Laws No. 146 (S. 55)

VERMONT 2016 SESSION LAWS

2015-2016 LEGISLATIVE SESSION (2016)

Additions and other material underlined in the original
are indicated by **Text**; deletions by
~~Text~~.

Vetoed are indicated by ~~Text~~;
stricken material by ~~Text~~.

No. 146

S. 55

ESTATE TAX—RULES AND REGULATIONS

An act relating to Vermont's **estate tax**.

It is hereby enacted by the General Assembly of the State of Vermont:

* * * **Estate** Taxes * * *

ESTATE TAX—RULES AND REGULATIONS, 2016 Vermont Laws No. 146 (S. 55)

Sec. 1. 32 V.S.A. § 7402 is amended to read:

<< VT ST T. 32 § 7402 >>

§ 7402. Definitions

The following definitions shall apply throughout this chapter unless the context requires otherwise:

- (1) “Commissioner” means the Commissioner of Taxes appointed under section 3101 of this title.
- (2) “Executor” means the executor or administrator of the **estate** of the decedent, or, if there is no executor or administrator appointed, qualified and acting within Vermont, then any person in actual or constructive possession of any property of the decedent.
- (3) “Federal **estate tax** liability” means for any decedent’s **estate**, the federal **estate tax** payable by the **estate** under the laws of the United States after the allowance of all credits against such **estate tax** provided thereto by the laws of the United States.
- (4) ~~“Federal gift **tax** liability” means for any taxpayer and any calendar year, the federal gift **tax** payable by the taxpayer for that calendar year under the laws of the United States. **[Repealed.]**~~
- (5) “Federal gross **estate**” means the gross **estate** as determined under the laws of the United States.
- (6) “Federal taxable **estate**” means the taxable **estate** as determined under the laws of the United States.
- (7) “Federal taxable gifts” means taxable gifts as determined under the laws of the United States.

ESTATE TAX—RULES AND REGULATIONS, 2016 Vermont Laws No. 146 (S. 55)

- (8) “Laws of the United States” means, ~~for any taxable year, the statutes of the United States relating to the federal estate or gift taxes, as the case may be, effective for the calendar year or taxable estate, but with the credit for State death taxes under 26 U.S.C. § 2011, as in effect on January 1, 2001, and without any deduction for State death taxes under 26 U.S.C. § 2058~~ **the U.S. Internal Revenue Code of 1986, as amended through December 31, 2015. As used in this chapter, “Internal Revenue Code” shall have the same meaning as “laws of the United States” as defined in this subdivision.**
- (9) “Nonresident of Vermont” means a person whose domicile is not Vermont.
- (10) “Resident of Vermont” means a person whose domicile is Vermont.
- (11) “Taxpayer” means the executor of an **estate**, the **estate** itself, the donor of a gift, or any person or entity or combination of these who is liable for the payment of any **tax**, interest, penalty, fee, or other amount under this chapter.
- (12) “Vermont gifts” means, ~~for any calendar year, all transfers by gift, excluding transfers by gift of tangible personal property and real property which have a situs outside Vermont, and also excluding all transfers by gift made by nonresidents of Vermont which take place outside Vermont.~~ **[Repealed.]**
- (13) “Vermont gross **estate**” means for any decedent the value of the federal gross **estate as provided** ~~under the laws of the United States~~ **Section 2031 of the Internal Revenue Code**, excluding the value of real or tangible personal property which has an actual **its** situs outside Vermont at the time of death of the decedent, and also excluding in the case of a nonresident of Vermont the value of intangible personal property owned by the decedent.

ESTATE TAX—RULES AND REGULATIONS, 2016 Vermont Laws No. 146 (S. 55)

(14) “Vermont taxable **estate**” means the value of the Vermont gross **estate**, reduced by the proportion of the deductions and exemptions from the value of the federal gross **estate** allowable under the laws of the United States, which the value of the Vermont gross **estate** bears to the value of the federal gross **estate**. **federal taxable estate as provided under Section 2051 of the Internal Revenue Code, without regard to whether the estate is subject to the federal estate tax:**

(A) Increased by the amount of the deduction for state death taxes allowed under Section 2058 of the Internal Revenue Code, to the extent deducted in computing the federal taxable estate.

(B) Increased by the amount of the deduction for foreign death taxes allowed under Section 2053(d) of the Internal Revenue Code, to the extent deducted in computing the federal taxable estate.

(C) Increased by the aggregate amount of taxable gifts as defined in Section 2503 of the Internal Revenue Code, made by the decedent within two years of the date of death. For purposes of this subdivision, the amount of the addition equals the value of the gift under Section 2512 of the Internal Revenue Code and excludes any value of the gift included in the federal gross estate.

ESTATE TAX—RULES AND REGULATIONS, 2016 Vermont Laws No. 146 (S. 55)

(15) “Situs of property” means, with respect to:

(A) real property, the state or country in which it is located;

(B) tangible personal property, the state or country in which it was normally kept or located at the time of the decedent’s death or for a gift of tangible personal property within two years of death, the state or country in which it was normally kept or located when the gift was executed;

(C) a qualified work of art, as defined in Section 2503(g)(2) of the Internal Revenue Code, owned by a nonresident decedent and that is normally kept or located in this State because it is on loan to an organization, qualifying as exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, that is located in Vermont, the situs of the art is deemed to be outside Vermont; and

(D) intangible personal property, the state or country in which the decedent was domiciled at death or for a gift of intangible personal property within two years of death, the state or country in which the decedent was domiciled when the gift was executed.

ESTATE TAX—RULES AND REGULATIONS, 2016 Vermont Laws No. 146 (S. 55)

Sec. 2. 32 V.S.A. § 7442a is amended to read:

<< VT ST T. 32 § 7442a >>

§ 7442a. Imposition of a Vermont estate tax and rate of tax

(a) A tax is hereby imposed on the transfer of the Vermont estate of every decedent dying on or after January 1, 2002, who, at the time of death, was a resident of this State. The base amount of this tax shall be a sum equal to the amount of the credit for State death taxes allowable to a decedent's estate under 26 U.S.C. § 2011 as in effect on January 1, 2001. This base amount shall be reduced by the lesser of the following: estates of decedents as prescribed by this chapter.

(1) The total amount of all constitutionally valid State death taxes actually paid to other states; or

(2) A sum equal to the proportion of the credit which the value of the property taxed by other states bears to the value of the decedent's total gross estate for federal estate tax purposes.

(b) A tax is hereby imposed on the transfer of the Vermont estate of every decedent dying on or after January 1, 2002, who, at the time of death, was not a resident of this State. The amount of this tax shall be a sum equal to the proportion of the base amount of tax under subsection (a) of this section which the value of Vermont real and tangible personal property taxed in this State bears to the value of the decedent's total gross estate for federal estate tax purposes. The tax shall be computed as follows. The following rates shall be applied to the Vermont taxable estate:

Amount of Vermont Taxable Estate	Rate of Tax
Not over \$2,750,000.00	None
\$2,750,000.00 or more	16 percent of the excess over \$2,750,000.00

The resulting amount shall be multiplied by a fraction not greater than one, where the numerator of which is the value of the Vermont gross estate plus the value of gifts under 32 V.S.A. § 7402(14)(C) with a Vermont situs, and the denominator of which is the federal gross estate plus the value of gifts under subdivision 7402(14)(C) of this title.

ESTATE TAX—RULES AND REGULATIONS, 2016 Vermont Laws No. 146 (S. 55)

Sec. 3. 32 V.S.A. § 7444 is amended to read:

<< VT ST T. 32 § 7444 >>

§ 7444. Return by executor

(a) An executor shall submit a Vermont **estate tax** return to the Commissioner, on a form prescribed by the Commissioner, when a decedent has an interest in property with a situs in Vermont and one or both of the following apply:

(1) A federal **estate tax** return is required to be filed under Section 6018 of the Internal Revenue Code; or

(2) The sum of the federal gross **estate** and federal adjusted taxable gifts, as defined in Section 2001(b) of the Internal Revenue Code, made within two years of the date of the decedent's death exceeds \$2,750,000.00.

(b) ~~In all cases where a **tax** is imposed upon the **estate** under section 7442a of this chapter, the executor shall make a return with respect to the **estate tax** imposed by this chapter.~~ If the executor is unable to make a complete return as to any part of the gross **estate** of the decedent, he or she shall include in his or her return (to the extent of his or her knowledge or information) a description of such part and the name of every person holding a legal or beneficial interest therein. Upon notice from the Commissioner, such person shall in like manner make a return as to such part of the gross **estate**. A return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this section shall contain a statement that the return is, to the best of the knowledge and belief of the fiduciary, true and correct.

ESTATE TAX—RULES AND REGULATIONS, 2016 Vermont Laws No. 146 (S. 55)

Sec. 4. 32 V.S.A. § 7475 is amended to read:

<< VT ST T. 32 § 7475 >>

§ 7475. Adoption of federal estate and gift tax laws

The laws of the United States relating to federal estate and gift taxes as in effect on December 31, 2012, are hereby adopted for the purpose of computing the tax liability under this chapter, except:

- (1) the credit for State death taxes shall remain as provided for under 26 U.S.C. §§ 2011 and 2604 as in effect on January 1, 2001;
- (2) the applicable credit amount shall under 26 U.S.C. § 2010 shall not apply; and the tax imposed under section 7442a of this chapter shall be calculated as if the applicable exclusion amount under 26 U.S.C. § 2010 were \$2,750,000.00; and
- (3) the deduction for State death taxes under 26 U.S.C. § 2058 shall not apply. **[Repealed.]**

Sec. 5. FEDERAL EXCLUSION AMOUNT; REPORT

On or before January 15, 2017, the Joint Fiscal Office shall report to the General Assembly on the impact of moving Vermont's exclusion amount under its estate tax to an amount that matches the federal basic exclusion amount under 26 U.S.C. § 2010(c)(3). The report shall identify the advantages and disadvantages for such a change, including an analysis of the revenue impact to the State, and the impact to individual taxpayers with various amounts of estate property.

See Revision note at end of Act

ESTATE TAX—RULES AND REGULATIONS, 2016 Vermont Laws No. 146 (S. 55)

Sec. 6. EFFECTIVE DATES

<< Note: VT ST T. 1 § 214 >>

<< Note: VT ST T. 32 §§ 7402, 7442a, 7444, 7475 >>

(a) Notwithstanding 1 V.S.A. § 214, Secs. 1–4 shall take effect retroactively on January 1, 2016 and apply to decedents dying after December 31, 2015.

(b) This section and Sec. 5 (federal exclusion study) shall take effect on passage.

Date Governor signed bill: May 26, 2016

Revision note: The Office of Legislative Council substituted “**January 15, 2017**” for “**January 15, 2016**” in the first sentence of Sec. 5 to correct a typographical error.



VT Form EST-191	ESTATE TAX RETURN Resident and Nonresident
----------------------------	--

This form applies only to estates of decedents who died after December 31, 2015.

Decedent's Information

Last Name of Decedent	First Name	Initial	Social Security Number
State of Domicile at Time of Death (use standard 2-character abbreviation)		Date of Death (MM DD YYYY)	
			For Department Use Only

Fiduciary's Information

Fiduciary's Name			Daytime Telephone Number
Mailing Address			For Department Use Only
City	State	ZIP Code	
Foreign Country (if not United States)		Email Address	

Attorney's Information

Attorney's Name			Daytime Telephone Number
Mailing Address			For Department Use Only
City	State	ZIP Code	
Foreign Country (if not United States)		Email Address	

- Check if this is an AMENDED return.
- Check if you filed an EXTENSION request previous to this filing.

VERMONT ESTATE TAX CALCULATION

1. Federal tentative taxable estate (from Federal Form 706, Line 3a)	1. _____
2a. Federal taxable gifts (from Federal Form 706, Line 4)	2a. _____
2b. Portion of Line 2a made within two years of date of death	2b. _____
3. Any deduction taken for death taxes paid to a foreign country (from Federal Form 706, Schedule K)	3. _____
4. Vermont Taxable Estate (add Lines 1, 2b, and 3)	4. _____
5. Exclusion	5. 2,750,000.00
6. Subtract Line 5 from Line 4. If negative, enter 0.	6. _____
7. Multiply Line 6 by 16% (0.16)	7. _____

(continued on next page)

Decedent's Last Name
Social Security Number



Amount from Line 7 _____ 0.00

VERMONT APPORTIONMENT CALCULATION

- 8. Vermont Gross Estate (see instructions) 8 _____
- 9. Value of gifts included on Line 2b with a Vermont situs (see instructions) 9 _____
- 10. Add Lines 8 and 9 10 _____
- 11. Federal Gross Estate (from Federal Form 706, Line 1) 11 _____
- 12. Total value of all gifts reported on Line 2b. 12 _____
- 13. Add Lines 11 and 12. 13 _____
- 14. Divide Line 10 by Line 13 (round to four decimal places). 14 _____

TAX DUE

- 15. Vermont Estate Tax (multiply Line 7 by Line 14)..... 15 _____
- 16. Percentage of Vermont Estate Tax due to Vermont. Enter "100.00%" or, if this is an estate of a qualifying farmer, percentage from Schedule EST-192, Line 3 ... 16. 100.00 %
- 17. Adjusted Vermont Estate Tax (Multiply Line 15 by Line 16) 17 _____
- 18. Prior tax payments to Vermont. 18 _____
- 19. REFUND. If Line 17 is less than Line 18, subtract Line 17 from Line 18. 19 _____
- 20. AMOUNT DUE. If Line 17 is more than Line 18, subtract Line 18 from Line 17. Make check payable to Vermont Department of Taxes..... 20 _____

DECLARATION OF FIDUCIARY		
I hereby certify this return is true, correct, and complete to the best of my knowledge. Preparers cannot use return information for purposes other than preparing returns.		
SIGN HERE	Date _____	Daytime Telephone Number _____
<input type="checkbox"/> Check here if authorizing the Vermont Department of Taxes to discuss this return and attachments with your preparer.		
Preparer's Use Only	Preparer's signature _____	Date _____
	Address _____	Daytime Telephone Number _____
	City, State, ZIP Code _____	

Make checks payable to Vermont Department of Taxes and mail this return to:

**Vermont Department of Taxes
133 State Street
Montpelier, VT 05633-1401**

**Form EST-191
(formerly E-1)
Page 2 of 2
Rev. 06/16**

5454

FORM EST-191 Instructions

Estate Tax Return

General Information

Please print in BLUE or BLACK ink only.

Who Must File

The executor or other fiduciary is required to file a Vermont return when property with situs in Vermont is included in the decedent's federal gross estate and one or more of the following apply:

1. A Federal Estate Tax Return, Form 706, is required to be filed under section 6018 of the Internal Revenue Code.
2. The sum of the federal gross estate and federal adjusted taxable gifts (as defined in section 2001(b) of the Internal Revenue Code) made within two years of the date of the decedent's death exceeds \$2,750,000.

Filing Due Date

The Vermont Estate Tax Return, Form EST-191 (formerly E-1), is required to be filed within nine months of the death of the decedent. To receive a six-month extension, file the Vermont Extension form, Form EST-195 (formerly ES-164).

Payment Due Date

Any amount owed is due and payable by the executor or other fiduciary at the time the return is required to be filed. An extension of time to file the return does not extend the time to pay. The tax estimated to be due must be paid with the extension of time request.

Required Information to be Included with the Vermont Return

If no return is due at the federal level

- Complete a pro forma Federal Form 706, Lines 1-4
- Include all related exhibits and appraisals

If no tax is due at the federal level

- Complete a pro forma Federal Form 706, Lines 1-4
- Include all related exhibits and appraisals

If federal tax is due and all assets are located in Vermont

- Include the Federal Form 706, excluding exhibits and appraisals

If federal tax is due and some assets are located outside of Vermont

- Include the Federal Form 706, excluding exhibits and appraisals

Completing a Pro Forma Federal Form 706

The Vermont Estate Tax is computed using certain values located on the federal estate tax form. These values are defined in federal statute, which Vermont statute adopts (except when stated otherwise). Follow the instructions for Federal Form 706 as you complete Lines 1-4.

Definitions**Vermont gross estate (Line 8)**

From the Federal Estate Tax Return (Form 706), add the gross value of each item of the decedent's real and tangible personal property located in Vermont. If the decedent is a resident of Vermont, include all intangible personal property.

Gifts of property with Vermont situs (Line 9)

From those federal taxable gifts included on Line 2b, add the gross value of each real or tangible item of personal property located in Vermont at the time the gift was executed. If the decedent was a resident of Vermont at the time of the gift, include the gifts of intangible personal property.

Intangible personal property

Bank accounts, stocks, bonds, and mortgages are intangible assets and are taxable by the state in which the decedent was a resident at the time of death regardless of where the asset was located at the date of death.

Where to File

Mail the return and any amount due, with check made payable to **Vermont Department of Taxes**, to:

Vermont Department of Taxes
133 State Street
Montpelier, VT 05633-1401

Contacting the Department - Estate Tax Division**Mailing address:**

Vermont Department of Taxes
133 State Street
Montpelier, VT 05633-1401

Telephone:

(802) 828-6820

Email Address:

tax.estate@vermont.gov

Web site Address:

www.tax.vermont.gov

Fax:

(802) 828-2720

Forms:

(802) 828-2515