

West Virginia Estate Tax
(for decedents dying after June 30, 1985)
and
Intestate
Succession
Law
(for decedents dying after July 9, 1993)

Information for specific circumstances is available from the Taxpayer Services and Internal Auditing Divisions of the West Virginia State Tax Department, your attorney, trust officer or accountant.

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IS IT NECESSARY TO PREPARE A WILL?

It is important to prepare a Will to insure that your estate is transferred to those persons whom you wish to receive your property. A Will can also often aid a smooth and rapid settlement of your estate. In the event you do not prepare a Will, the law outlines the manner in which your property is to be distributed. This "intestate succession law" is illustrated by the chart immediately following this information.

The Probate Estate is the assets owned solely by the decedent at the date of death, including:

1. Real estate or tangible personal property located in WV, whether the decedent was a resident or nonresident of this state at the time of death.
2. Intangible personal property (such as bank accounts, stock, bonds, etc.) if the decedent resided in WV, whether or not the intangible property is located in this state.

Example: An Ohio bank account of a WV resident decedent is taxable in WV.

The Nonprobate Estate is the assets in which the decedent had an interest, but not sole ownership, at the date of death. Included are the following assets:

1. Any transfer intended to take effect in possession or enjoyment at or after the death of the decedent (life estate).
2. Trusts and property payable to a beneficiary on the death of the decedent.
3. Annuity payments, except those which receive special federal income tax treatment (qualified pension and retirement plans).
4. Any transfer of a general power of appointment.
5. Any property owned by the decedent as a joint tenant with right of survivorship.

WHAT IS WV ESTATE TAX?

The WV estate tax is a death tax imposed upon the estates of resident decedents, and the estates of nonresident decedents owning real estate or tangible personal property in WV who are subject to the federal estate tax. Also subject to the tax are estates of alien decedents having real estate or tangible personal property with actual situs in WV and intangible personal property physically present within WV.

FILING REQUIREMENTS: The personal representative of the estate is required to file the WV estate tax return and pay any tax due within nine months after death. A copy of the federal return must accompany the WV return.

The filing requirement for a death in 1985 is an estate with a gross value exceeding \$400,000; in 1986, a gross value exceeding \$500,000; in 1987 through 1997 a gross value exceeding \$600,000; in 1998, a gross value exceeding \$625,000; in 1999, a gross value exceeding \$675,000; in 2002 and 2003, a gross value exceeding \$1,000,000; in 2004 and 2005, a gross value exceeding \$1,500,000; in 2006 through 2008, a gross value exceeding \$2,000,000; and in 2009, a gross value exceeding \$3,500,000.

TAX COMPUTATION. The WV estate tax is equal to the credit for State Death Taxes computed as shown in the instructions for the federal estate return. For estates of nonresidents, the tax is apportioned. Please note that where a resident decedent's estate consists of real estate or tangible personal property with actual situs outside WV, the tax is also apportioned.

INTEREST AND ADDITIONS TO TAX. Any tax not paid within nine months after the date of death will have interest and additions to tax added at the rates established under WV law (WV Code § 11-10-18 and § 11-11-15).

To assist your understanding of this brochure, we offer the following definitions. Please refer to this section for clarification of any word you may not fully understand.

AUGMENTED ESTATE: The sum of the net probate estate and any of the decedent's reclaimable assets, jointly held accounts, life insurance, etc. held with any person other than the surviving spouse.

BENEFICIARY: The person who receives property, benefits, or advantages from another whether by Will, deed or law of succession property.

COURT: The County Commission, or branch thereof, in this state, which has jurisdiction in matters relating to affairs of decedents.

DECEDENT: A deceased person.

DESCENDANT: Issue or offspring of a decedent.

DEVISE: Testamentary disposition (through a Will) of real or personal property.

DEVISEE: Person designated to receive something in a Will.

ELECTIVE SHARE: The surviving spouse of a decedent who dies domiciled in this state has a right of election, i.e. to claim an amount equal to the elective share percentage (determined by the length of the marriage) of the augmented estate. The surviving spouse's assets are used to help determine the proper elective share.

ESCHEAT: If there are no heirs, the assets of the estate pass to the State of WV.

FIDUCIARY: A personal representative, administrator or executor of the decedent's estate or the trustee of a trust as created under the decedent's Will.

HEIRS: Persons who are entitled to the property of a decedent under the statutes of intestate succession.

INTESTACY: The condition of dying without leaving a valid Will.

INTESTATE ESTATE: Any part of a decedent's estate not effectively disposed of (devised) by a Will, which then passes to the decedent's heirs under intestate succession.

LIFE ESTATE: A transfer or holding of assets which is limited to the life of the owner or of some other transferee.

PERSONAL REPRESENTATIVE: The person or instrument nominated to be responsible for the administration of a decedent's estate.

PROBATE: An order of court judging a Will to be valid and ordering it to be recorded, but more broadly speaking, the entire process of admitting a Will to record, deciding questions arising in the administration of an estate and approving the accounts of an executor or an administrator. In the event there is no Will, probate refers to the process of Intestate Administration.

PROPERTY: The total sum of one's possessions; that which belongs to a person, whether tangible or intangible, and including exclusive and unrestricted rights.

REPRESENTATION: When intestate distribution is in equal shares to those equally related to the decedent.

TESTATE: The condition of having made and left a valid Will.

TRANSFER: To convey or give control of possession from one person to another.

WILL: A written instrument by which a person disposes of his property at his death, but which will not be effective unless executed in accordance with statutory provisions.

DISTRIBUTION OF ASSETS THROUGH THE WV INTESTATE SUCCESSION LAW (effective 7/9/1993)

If you have no will and you are survived by any of the following examples, your assets will be distributed as follows:

Spouse	Descendants of Decedent & surviving spouse	Descendants of Decedent & pre-deceased spouse	Descendants of Decedent & prior relationship	Descendants of Surviving Spouse & prior relationship	Parents	Descendants of Parents	Grandparents or Descendants	
X								100% to surviving spouse
X	X							100% to surviving spouse
X					X			100% to surviving spouse
X				X	X			100% to surviving spouse
X	X			X				60% to surviving spouse 40% to descendants of decedent by representation* 0% to descendants of surviving spouse
X			X					50% to surviving spouse 50% to descendants of decedent, by representation
X	X		X					50% to surviving spouse 50% to all descendants, by representation*
X	X			X	X			100% to surviving spouse

X			X		X			50% to surviving spouse 50% to all descendants of decedent, by representation* 0% to descendants of surviving spouse from prior relationship 0% to parents
		X						100% to descendants of decedent, by representation*
		X	X					100% to all descendants of decedent, by representation*
					X			100% to parents**
						X		100% to descendants of parents, by representation*
							X	50% to surviving maternal grandparents, or descendants of maternal grandparents by representation* if neither maternal grandparent survives 50% to surviving paternal grandparents, or descendants of paternal grandparents by representation* if neither paternal grandparent survives If either set of grandparents, and all descendants thereof, are deceased, then 100% to surviving set of grandparents, or descendants by representation*

*First-generation descendants of decedent would share equally in the estate. If decedent is predeceased by one or more first-generation descendants, then share(s) are combined and then divided equally among the second-generation descendants. If the maternal grandparents and the paternal grandparents are all deceased and leave no surviving descendants, the entire estate passes to the State of WV.

**Equally if both survive or 100% to the surviving parent.

NOTES:

1. Dower is abolished.
2. Transfers by an individual who dies intestate will be treated as an advancement only if declared in a contemporaneous writing.
3. Relatives of half-blood inherit the same share as if they were whole-blood.
4. An individual who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent.

For additional information, please contact:

WV State Tax Department
Internal Auditing Division
Revenue Center
1001 Lee Street
Charleston, WV 25301
Phone: 304-558-8500

Taxpayer Services Division
State Capitol Complex, West Wing, Room 417
Charleston, WV 25305
Phone: 304-558-3333 or
Toll free: 1-800-WVA-TAXS (1-800-982-8297)

Internet Address: <http://www.state.wv.us/taxdiv>