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**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF REVENUE ADMINISTRATION  
(603) 271-2191**

**FREQUENTLY ASKED QUESTIONS  
(FAQ's)**

## **LEGACY, SUCCESSION & ESTATE TAXES**

**RSA 87, REV 1300**



**Kevin A. Clougherty, Commissioner**

The New Hampshire Department of Revenue Administration offers this publication of answers to the most frequently asked questions. While we have attempted to identify the most common concerns, this publication does not address every situation, set of facts, or circumstances. Our goal is to develop a tax administration system that is fair and efficient, with taxpayers having the highest degree

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**Q: What are Legacy and Succession Taxes?**

**A:** An 18% tax assessed on property passing at death on both probate and non-probate assets, including assets passing through trusts or by operation of law for deaths occurring prior to January 1, 2003.

NOTE: The Legacy and Succession tax (RSA 86) was repealed effective for deaths occurring on or after January 1, 2003, therefore, this tax would not apply.

**Q: Who pays them?**

**A:** The non-lineal descendants or ascendants, who upon death of the owner become the new owner of assets or property whether with or without a will or trust. The following table lists taxable and non-taxable legatees:

Taxable Legatees

Brother/Sister  
Aunt/Uncle  
Niece/Nephew/Cousin  
Mother-in-Law/Father-in-Law  
Daughter-In-Law/Son-in-Law (if divorced or remarried)  
Divorced Wife/Divorced Husband  
Non-Blood Relative  
Friends/Neighbors  
Anyone Not Listed in the Non-Taxable Column

Non-Taxable Legatees

Mother/Father  
Son/Daughter  
Stepson/Stepdaughter (current marriage)  
Legally Adopted Son/Legally Adopted Daughter (adopted before reaching the age of majority)  
Husband/Wife  
Common Law Spouse (decreed under RSA 457:39)  
Grandmother/Grandfather  
Grandson/Granddaughter  
Step-grandson/Step-granddaughter (current marriage)  
Step-great-grandson/Step-great-granddaughter (current marriage)  
Daughter-in-Law/Son-in-Law (current marriage)  
Care of Cemetery in New Hampshire  
City or Town for public, municipal purposes  
Public Charities (IRS 501(c)(3))  
Child living in homestead for 10 consecutive years prior to his/her 15<sup>th</sup> birthday

Refer to RSA 86:6 for further clarification.

**Q: Who must file the return?**

**A:** The executor or administrator must file a Legacy and Succession Tax return for the estate of a decedent if a tax liability occurs. A tax liability occurs when a bequest, joint transfer, trust, transfer within two years of death or the rest and residue is granted to a taxable legatee. You are only required to file a DP-145 tax return if there is a taxable legatee(s).

**Q: When are the tax returns due?**

**A:** The Legacy & Succession Tax, NH Estate Tax, and Non-Resident Personal Property Tax returns are all due nine months from the date of death.

**Q: Who do I contact with questions?**

**A:** Central Taxpayer Services, PO Box 457, Concord, NH 03302-0457, or call (603) 271-2191.

**Q: If the tax return for Legacy & Succession Tax, NH Estate Tax, or the NH Personal Property Tax cannot be filed timely, how do I get an extension?**

**A:** To obtain an extension of time to file a Legacy and Succession tax return or NH Personal Property tax return, the extension request must be filed with the department on or before the original due date of the return and include 100% of the tax due. The extension is to file the return only, not for an extension to pay the tax. The NH Estate tax is paid on an estimated form and a copy of the federal approved extension is attached to the NH Estate tax return when filed.

**Q: Is a jointly held property subject to legacy and succession tax?**

**A:** Yes, if the survivor is a taxable legatee pursuant to the chart included in this brochure.

**Q: If the Legacy and Succession Tax is repealed, do I still have to pay it?**

**A:** The repeal of the Legacy and Succession Tax is effective for deaths occurring on or after January 1, 2003. Legacy and Succession tax is still due within 9 months of the date of death for deaths occurring on or prior to December 31, 2002.

NH 706 Estate Tax Return:

**Q: What is an Estate tax?**

**A:** A tax imposed upon the transfer of assets of every estate which is subject to an estate tax under the provision of the US Internal Revenue Code of 1986.

**Q: Who must file a NH-706 Estate Tax Return?**

**A:** The executor or administrator must file a NH 706 Estate Tax Return if: the resident decedent has a total gross estate that exceeds certain amounts as follows:

<u>Calendar Year</u>	<u>Gross Amount Exceeds:</u>
2000 & 2001	\$ 675,000.
2002	\$1,000,000.
2004	\$1,500,000.

NOTE: for deaths occurring on or after January 1, 2005, a NH-706 estate tax return is not required to be filed due to the federal repeal of the estate death tax credit.

IRC Section: 2035 Effective 08/05/97 RSA 87:1

Non-residents who own real estate and/or tangible personal property in NH must also file a form NH-706 and pay the tax.

Non-Resident Personal Property Tax:

**Q: Who must file a Non-Resident Personal Property Transfer Tax Return?**

**A:** The executor or administrator of any non-resident decedent whose death occurred prior to January 1, 2003, owning tangible personal property in New Hampshire must file a return. A non-resident decedent is someone who did not claim New Hampshire as their legal residence. Tangible personal property is personal property which has physical substance such as furniture, boats, cars etc. Stocks or bank accounts are not tangible personal property.

**Q: How do I know if a taxable transfer occurs?**

**A:** Any transfer to a taxable person that occurs within two years prior to the decedent's date of death is taxable.

**Q: Who do I contact with my questions about probating an estate or the Probate Court?**

**A:** You should contact the Probate Court in the County where the decedent resided or visit the Probate Court's web site at [www.courtsstate.nh.us/probate/index.htm](http://www.courtsstate.nh.us/probate/index.htm)

**Q: My insurance Company is requesting a tax exempt waiver certificate. How do I get one?**

**A:** If the date of death is on or after 1/1/03 a certificate is not required. If the death is prior to this date please contact the Department at (603) 271-2191.