

WHAT IS THE CALIFORNIA ESTATE TAX MARITAL DEDUCTION?

“The federal estate tax is something that you should be aware of if you have been financially successful throughout your life. It may or may not be fair, but your death is a taxable event in the eyes of the tax man if you are transferring a considerable amount of wealth.”



This tax is only a factor for high net worth individuals, because there is a relatively large estate tax credit or exclusion. During the current calendar year, the amount of this exclusion is \$5.43 million. You can transfer up to \$5.43 million tax-free, but anything that you are transferring beyond this amount is potentially taxable.

We are writing this paper in 2015. Under currently existing laws, the estate tax exclusion can be updated each year to account for inflation. There have been increases in the amount of the estate tax exclusion over the last several years, so there will probably be another relatively modest increase for the 2016 calendar year.

The bite is considerable if you do face estate tax exposure; this tax carries a maximum rate of 40 percent.

Married Couples

You do not have to worry about taxation on asset transfers to your spouse if you are legally married in the eyes of the law. There is an unlimited estate tax marital deduction. This allows you to transfer unlimited assets to your spouse free of taxation.

Due to a Supreme Court ruling that was handed down a couple of years ago, this deduction is afforded to same-sex couples who are legally married. Prior to the ruling, because of the Defense of Marriage Act, the unlimited marital deduction was not available to legally married same-sex couples.

In fact, the Supreme Court case was initiated by a married woman who was forced to pay the estate tax on an inheritance that was left to her by her female spouse.

There is a caveat to the above. The unlimited marital estate tax deduction is only available to American citizens. Foreign citizens cannot use this deduction.

If the unlimited marital deduction was extended to non-citizens, a surviving spouse could return to his or her country of citizenship with a tax-free inheritance. The American Internal Revenue Service would never be able to collect anything after the death of the surviving spouse. This is why this stipulation is in place.

Federal Gift Tax

You would automatically consider giving gifts while you are living to avoid the estate tax. The tax man is well aware of this, and as a response, there has been a gift tax in place since 1932.

In fact, this was a reenactment. The estate tax was established in 1916, and people did give gifts to avoid the tax for a few years. In 1924 a gift tax was enacted, but it was repealed in 1926. It was reenacted in 1932, and it is been in place ever since then.

The federal gift tax and the estate tax are unified, so the \$5.43 million exclusion is a unified lifetime exclusion. This exclusion applies to your estate, but it also

applies to taxable gifts that you give while you are living.

The unlimited marital deduction extends to the gift tax. There is no limit to the amount of money and/or property that you can transfer to your spouse tax-free, regardless of when the transfers take place.

Summary

There are taxes on large asset transfers in the United States, and you should be aware of them when you are planning your estate. We have a federal estate tax, and there is also a federal gift tax that exists to stop you from giving gifts to avoid the estate tax. These taxes are unified, and they carry a maximum rate of 40 percent.

The transfer taxes are potentially applicable on asset transfers to anyone other than your spouse. There is an unlimited marital gift and estate tax deduction. You can use this deduction to transfer unlimited assets to your spouse tax-free, either while you are living, or after you pass away.

However, to use the unlimited marital deduction, the spouse must be an American citizen.

If you are concerned about how taxation can impact your financial legacy, action is required. You can discuss estate tax efficiency strategies with a licensed estate planning attorney if you are looking for solutions. Many attorneys offer free initial consultations, so you can establish a relationship without taking any significant risks.

References

IRS

<http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Estate-and-Gift-Taxes>

Genworth Financial

<http://www.investopedia.com/terms/u/unlimited-marital-deduction.asp>

About the Author



Attorney Caprice L. Collins is a top rated Harvard Law School graduate. She has 34 years of legal experience with a successful law practice devoted exclusively to Estate/Business Planning and Trust Administration. Attorney Collins is a well-respected keynote speaker on Wills, Living Trusts, Estate Planning, Business Planning and Trust Administration. She has appeared on California's Real Estate Radio Station KTLK AM 1150 as a legal expert on Estate Planning and Living Trusts among many other notable media appearances.

Attorney Collins has substantial experience in Estate Planning for high net worth individuals using Family Limited Partnerships and other business entities to provide Asset Protection to their families. She has assisted organizations in their fundraising efforts by authorizing articles for their publications and conducting free seminars to their donors on advance Estate Planning Strategies such as Charitable Remainder Trusts, Family Living Partnerships, Irrevocable Life Insurance Trusts and Qualified Personal Residence Trusts. She also provides FREE Seminars on Living Trusts, Asset Protection and Business Planning to civic, faith-based, professional and business organizations.

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