

# WHAT IS THE ESTATE TAX MARITAL DEDUCTION?

*To Be Able to Position Your Assets  
Optimally, You Must Understand the  
Parameters of the Federal Estate Tax*



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It comes as a surprise to many people when they hear that there are taxes on asset transfers in the United States. When you pass away leaving your resources to your loved ones, these transfers are subject to a tax.

The estate tax carries a very significant rate. At the present time, the maximum rate is 40 percent. Imagine the taxable portion of your assets being shaved down by 40 percent.

It took a lot of effort over the course of a lifetime to accumulate these resources. In one fell swoop this large percentage could be wiped away.

Fortunately, there are steps that can be taken to preserve this wealth for the benefit of your family. Estate planning attorneys help clients implement these tax efficiency strategies.

To be able to position your assets optimally, you must understand the parameters of the federal estate tax. If you are married, there are a number of things that you should know. With this in mind, let's look at the federal estate tax marital deduction.

### ***Estate Tax Credit or Exclusion***

To understand the marital deduction, you need some information about the federal estate tax credit or exclusion. Every penny that you are passing on to your loved ones is not going to be taxable because of the exclusion.

In 2014, the amount of this exclusion is \$5.34 million. If the value of your estate does not exceed this amount, the estate tax will not be applicable when your assets are being transferred to your heirs.

On the other hand, if your estate exceeds \$5.34 million in value, the estate tax will be a factor.

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*While we are on the subject, it should be noted that there is an estate planning solution for people who are married to citizens of other countries in the form of qualified domestic trusts.*

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A portion of this exclusion must be utilized to give tax-free inheritances to any of your relatives, even your children, with one exception: your spouse.

### ***Unlimited Marital Deduction***

There is an unlimited marital deduction that allows you to bequeath assets of unlimited value to your spouse free of the estate tax. However, there is one caveat to this statement.

To be able to take advantage of the unlimited marital deduction, your spouse must be a citizen of the United States. Why is this stipulation in place?

Let's say that the estate tax exclusion was available to non-citizen spouses, and your spouse is a citizen of Thailand. You predecease your spouse, and she inherits everything that you owned.

Your spouse moves back to Thailand with her inheritance and she never returns to the United States. Under these circumstances, no remittances to the Internal Revenue Service will ever be forthcoming.

This is why the unlimited marital deduction is not afforded to non-citizen spouses. Now let's get out of the realm of the hypothetical and back to reality.

The unlimited marital deduction is not something that really concerns the Internal Revenue Service over the long haul. If you use this exclusion to leave everything to your American spouse tax-free, he or she is going to be subject to the estate tax eventually. The IRS will get its share before all is said and done.

While we are on the subject, it should be noted that there is an estate planning solution for people who are married to citizens of other countries in the form of qualified domestic trusts.



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Medicaid (Medi-Cal in California) is a government funded program that provide financial assistance for seniors that need help paying for healthcare services such as a nursing home. People must meet certain criteria in order to receive Medicaid. In some cases, trying to meet eligibility for Medicaid can leave a person with nothing, often having to deplete their net worth, or give assets away in order to qualify for Medicaid. But with a little Medicaid Planning, you can use this government benefit and still retain your estate.

## ***Conclusion***

The unlimited marital deduction allows spouses who are both citizens of the United States to transfer unlimited assets to one another free of federal transfer taxes.

If you're married to someone who is a citizen of another country, you may not use the unlimited marital deduction.

However, simply leaving everything to your spouse in a tax-free manner is not going to provide long-term tax efficiency. As stated in the previous section, your spouse would then be in possession of taxable assets after you die.

Estate planning is going to be necessary even though you have the option of leaving assets to your spouse using the unlimited marital deduction. It is possible that this deduction can be woven into your plan to provide some benefits, but the holistic picture will be more complex.

There are numerous different ways to position assets with tax efficiency in mind. The best course of action will vary depending on the circumstances. The key is to act well in advance in an intelligent and informed manner.

When you are talking about a federal death tax that carries a 40 percent maximum rate, the stakes are high. This tax can have a very significant impact on the financial legacy that you would like to leave behind.

The wise course of action would be to discuss everything in detail with your estate planning attorney while you and your spouse are still alive. You can both participate in the creation of an estate plan that

## ABOUT THE AUTHOR

### ROY W. LITHERLAND



Roy Litherland has been providing legal services in Santa Clara and Santa Cruz Counties continuously since 1975.

Roy has an undergraduate degree in accounting from Indiana State University, and a Juris Doctor degree from Indiana University. In law school he was a recipient of the Dean Faust Award and received awards and honors in income taxation and estate and gift taxation.

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