

WHAT IS THE MARITAL DEDUCTION?

*Regardless of Your Thoughts on the Matter,
the Estate Tax Is a Fact of Life, and You Have
to Prepare for It to the Best of Your Ability*



By Larry Parman

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Estate planning for high net worth families has everything to do with estate tax efficiency strategies. It takes careful planning to preserve your wealth for the well-being of those that will be left behind after you pass away.

The federal estate tax can take a heavy toll on a family fortune. In 2014 the amount of the exclusion is \$5.34 million. This is the amount that you can leave to your heirs tax-free. Anything that is transferred beyond this amount is potentially taxable at a maximum rate of 40 percent.

Many people think that a tax on assets that you have left at the time of your death is unnecessary and excessive. After all, you have paid many different types of taxes throughout your life. Regardless of your thoughts on the matter, the estate tax is a fact of life, and you have to prepare for it to the best of your ability.

TAX-FREE GIVING BETWEEN SPOUSES

If you are married, you do not have to use any of your \$5.34 million exclusion when you leave a bequest to your spouse. There is an unlimited marital deduction. You can transfer property of unlimited value to your spouse free of the death tax.

Why would the powers that be allow for this tax-free transfer? The tax man doesn't feel any loss, because the surviving spouse will still be in possession of a taxable estate. Eventually, a death tax will be levied.



This brings us to another relevant piece of information. The unlimited marital estate tax deduction is only afforded to spouses who are citizens of the United States. If you are married to someone who is a citizen of another country, you can't use this deduction.



This is because the IRS would never see any money if the non-citizen spouse took his or her inheritance back to his or her country of citizenship.

It should be noted that there is an estate planning strategy that is often implemented when a high net worth individual is married to someone who is a citizen of a country other than the United States. This strategy involves the execution of a legal device called a qualified domestic trust.

Simply resolving to leave everything to your spouse tax-free is not a sound wealth preservation strategy. You are just postponing the inevitable.

In fairness, the fact that you can leave an unlimited store of assets to your spouse tax-free can come into play when you are developing a proper estate plan. However, utilization of the marital deduction would be part of a broader plan, not a plan in and of itself.

FEDERAL GIFT TAX & UNIFICATION

When you are examining the implications of the federal estate tax and the unlimited marital deduction, the federal gift tax must be brought into the discussion.

The estate tax is not the only tax on asset transfers in the United States. If it was, you could simply give away your assets while you are living to avoid the estate tax. To prevent this there is a gift tax in place.

The gift tax and the estate tax are unified. The \$5.34 million exclusion that we have in 2014 is a lifetime unified exclusion. It encompasses taxable gifts that you give while you are living coupled with the value of your estate as it is being passed on to your heirs.



To put this into perspective, if you gave \$5.34 million in tax-free gifts throughout your life using this unified exclusion, nothing at all would be left to apply to your estate.

The unlimited marital deduction extends to lifetime gifts to your spouse, because the gift tax and the estate tax are unified.

ESTATE TAX EXCLUSION PORTABILITY

While we are on the topic of the unlimited marital deduction, we should touch upon the portability question.

The unified lifetime exclusion is portable between people who are married to one another. If you predecease your spouse, he or she could use your exclusion in addition to his or her own.

Portability is something that you have to opt in to by filing Internal Revenue Service Form 706 within nine months of the death of the decedent in question. You may request a six-month extension if you need more time.

CONCLUSION

Let's look back at what we have learned. There is a unified gift and estate tax that carries a \$5.34 million exclusion in 2014. Asset transfers exceeding this amount are potentially taxable at a maximum rate of 40 percent.

There is an unlimited marital gift and estate tax deduction. This deduction allows you to transfer assets to your spouse free of federal transfer taxes. The unlimited marital deduction is only afforded to spouses who are citizens of the United States.

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About the Author

Larry Parman



After helping his own family deal with a lengthy probate and a battle with the IRS following his father's death in a farm accident, Larry made a decision to help families create effective estate plans designed to reduce taxes, and minimize legal interference with the transfer of assets to one's heirs, and protect his clients' assets from predators and creditors. Following a dozen years in the investment banking and financial services business, in the mid-1980s Mr. Parman formed a law firm that gives families the peace of mind that comes from having created a premier estate and financial plan.

After forming his law firm in 1984, he offered a series of public and private seminars to inform the public about using a Living Trust as the foundation of a family's estate plan. Today, Parman & Easterday is one of the leading business and estate planning law firms in the Midwest. The firm's primary focus is on business and estate planning, elder law, asset protection, and providing effective estate planning solutions for clients.

Today, the firm's premier estate plan design is referred to as a Legacy Wealth Plan.

Mr. Parman is a frequent guest on the radio and can be seen on television talk shows explaining the importance of proper estate planning. Prosperity Productions selected Mr. Parman as a featured speaker in a nationally-recognized educational video on Living Trusts. He is the author of numerous published articles on financial and estate planning matters and the co-author of two books, *Estate Planning Basics: A Crash Course in Safeguarding Your Legacy* and *Guiding Those Left Behind in Oklahoma: Settling the Affairs of Your Loved Ones*.

Mr. Parman is a member and Fellow of the American Academy of Estate Planning Attorneys. He is also a member of the Oklahoma and Missouri Bar Associations, the American Bar Association, and the Oklahoma City Estate Planning Council.



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