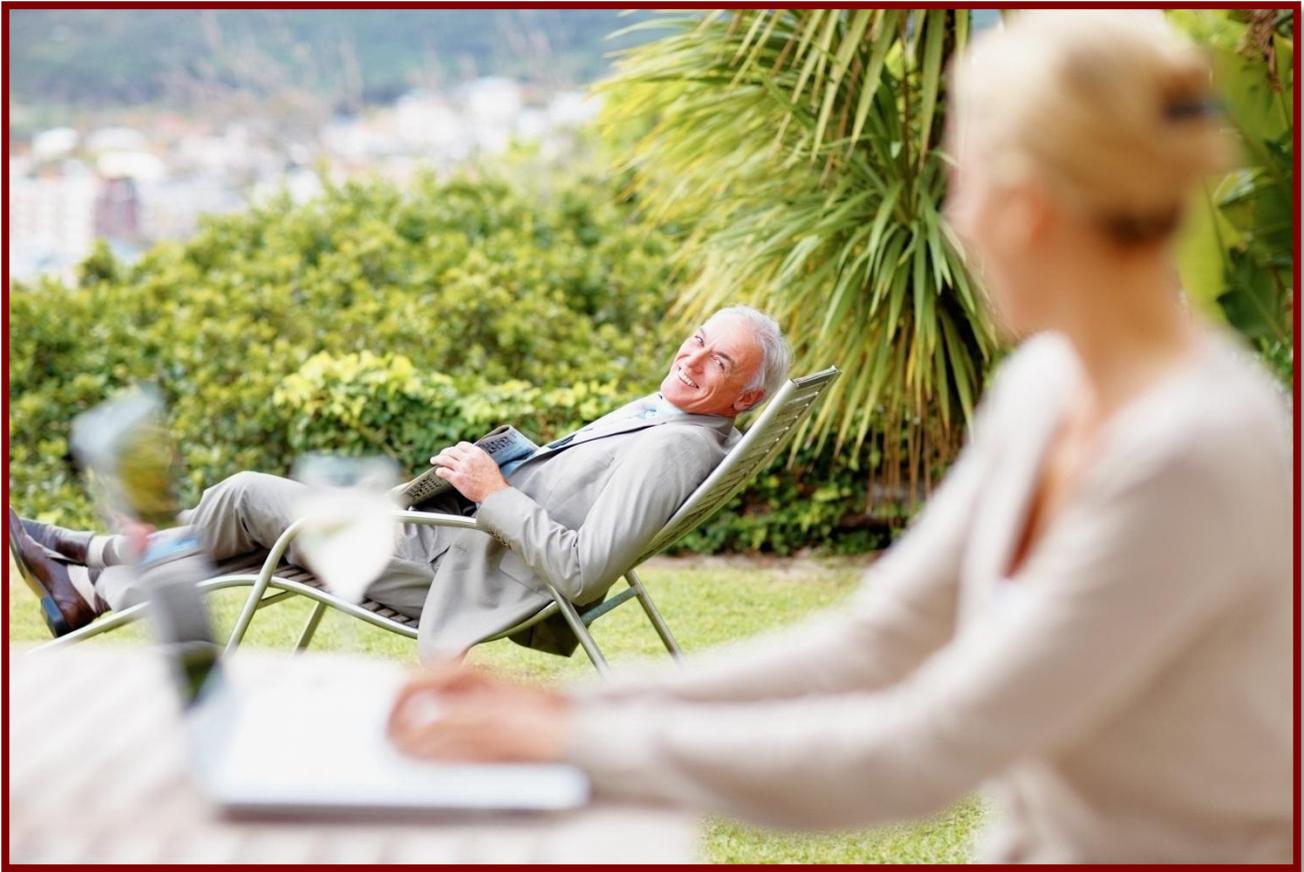


# WHAT IS THE FEDERAL ESTATE TAX MARITAL DEDUCTION?

*When You are Planning Your Estate You Should  
be Aware of the Existence of the Federal Estate  
Tax which Can Significantly Erode the Assets that  
You are Passing On to Your Loved Ones*



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When you are planning your estate you should be aware of the existence of the federal estate tax. This tax can significantly erode the assets that you are passing on to your loved ones.

The maximum rate of the federal estate tax at the present time is 40 percent. Clearly, this is an attention-getting figure.

Most families are not faced with the prospect of paying the estate tax because there is an exclusion or credit. The amount of this exclusion in 2014 is \$5.34 million.

There are annual adjustments to account for inflation. Next year you may see a figure that is slightly higher than \$5.34 million.

The exclusion is the amount that you can bequeath to others before the estate tax would be applicable. If you are not going to be leaving more than \$5.34 million to your heirs, you are not exposed to the estate tax.

## BEQUESTS TO SPOUSES

You do not have to use any of your \$5.34 million exclusion or credit to leave bequests to your spouse, because there is an unlimited federal estate tax marital deduction.

Under the tax code you can leave an unlimited amount of money and/or property to your spouse free of the estate tax, as long as your spouse is an American citizen.



Why would the powers that be restrict the unlimited marital deduction to American citizens? The answer to this question is quite instructive from an estate planning standpoint.

To explain by way of example, let's assume that you are a man who is married to a woman who is a citizen of another country. If the unlimited marital deduction was extended to non-citizen spouses, you could leave everything to your spouse tax-free.

She could then return to her country of citizenship, inheritance in tow. If she was to die in that country, the United States Internal Revenue Service would not be able to levy a death tax. This is why the unlimited marital deduction is only extended to citizen spouses.

The tax man doesn't mind allowing you to pass along assets to your spouse tax-free, because your spouse will still be exposed to the death tax. Because of this, high net worth individuals must implement tax efficiency strategies in advance. Utilization of the unlimited marital deduction is not a comprehensive estate planning solution for wealthy individuals.

## **SAME-SEX MARRIED COUPLES**



Because of the recent Supreme Court ruling that found a portion of the Defense of Marriage Act unconstitutional, the unlimited marital deduction extends to same-sex couples who are legally married in the state of New York and elsewhere.

In fact, it was a New Yorker named Edith Windsor who initiated the suit that made its way to the Supreme Court. She was forced to pay the estate tax after receiving an inheritance from her spouse, Thea Spyer, because they were of the same gender. The unlimited marital deduction was not afforded to her at that time because she was in a same-sex marriage.

## UNIFICATION OF GIFT & ESTATE TAXES

There is a gift tax in place on the federal level, and it is unified with the estate tax. This \$5.34 million exclusion that we speak of encompasses taxable gifts that you give while you are living in addition to the estate that will be left behind to your loved ones.

Because the gift tax and the estate tax are unified, the unlimited marital deduction is applicable here. You can give unlimited gifts to your spouse tax-free because of this deduction.

## PORTABILITY OF ESTATE TAX EXCLUSION



Since we are examining the estate tax exclusion as it applies to married couples, we should mention the portability of the exclusion. In an estate planning context the term “**portability**” refers to the ability of a surviving spouse to use the exclusion that was allotted to his or her deceased

spouse.

Using the amount of the exclusion as it stands throughout 2014, a surviving spouse would have a total exclusion of \$10.68 million.

## CONCLUSION

There is a unified federal gift and estate tax that carries a \$5.34 million exclusion

in 2014. You are using a portion of this exclusion when you give tax-free gifts and/or bequests to your heirs.

However, there is an unlimited marital deduction. You need not use any of your unified exclusion to give gifts or bequests your spouse. Because of this unlimited deduction, you can pass along any amount of money and/or property to your spouse free of transfer taxes.

The marital deduction can be useful, but it is not a cure-all. If you used the unlimited marital deduction to leave everything to your spouse, the estate tax would still be a factor. It could eventually be levied on the estate of your surviving spouse.

For this reason, high net worth individuals should discuss comprehensive tax efficiency solutions with a licensed estate planning attorney.

## **REFERENCES**

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## About the Author



### Mark S. Eghrari

Mark S. Eghrari is an attorney in private practice in Smithtown, New York. He has been in practice since 1988. Mark S. Eghrari provides extensive estate and tax planning services to individuals and businesses. Mr. Eghrari's primary focus is helping clients avoid probate, minimize or eliminate Federal and State Estate taxes and protect their assets from the high cost of nursing care, if they become ill. Mr. Eghrari's expertise is in providing unique and innovative estate planning solutions that create a secure future for his clients and their loved ones. Mr. Eghrari is a member of the American Bar Association and New York State Bar Association as well as the National Academy of Elder Law Attorneys and the American Academy of Estate Planning Attorneys.

Mr. Eghrari completed his undergraduate work at Lafayette College in Easton, Pennsylvania and received his MBA in banking and finance from Hofstra University on Long Island. He earned his Juris Doctorate from the Hofstra University School of Law, where he was a member of the Law Review. While in law school, Mr. Eghrari gained practical experience in the corporate tax department of Citicorp in New York city.

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