What Is the Unlimited Marital Estate Tax Deduction?

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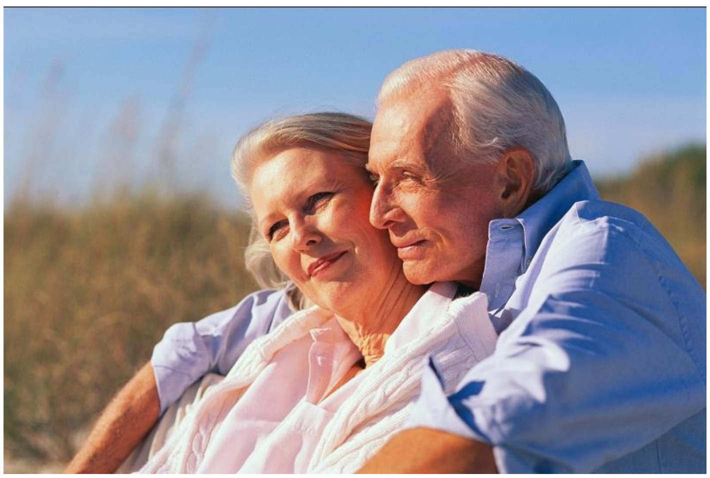
Death Tax

When you leave assets to others after you pass away, these asset transfers are potentially taxable. Most people do not pay the estate tax because there is a credit or exclusion. If the value of your estate does not exceed the amount of this exclusion, the estate will not be subject to the death tax.

At the present time, the amount of this credit or exclusion is $5.34 million. This is derived from a base of $5 million that was put into place for the 2011 calendar year.

Since then, there have been annual adjustments to account for inflation. Next year the figure may be a bit higher after another inflation adjustment is applied. The maximum rate of the estate tax is 40 percent at the time of this writing in 2014.

Marital Deduction



The unlimited marital deduction allows you to leave any amount of money and/or property to your spouse without incurring any estate tax liability. You do not have to use any of your unified lifetime estate tax exclusion to transfer assets to your spouse.

We should point out the fact that there is a gift tax in place as well as an estate tax. The gift tax exists to prevent people from giving away assets while they are living in an effort to avoid the estate tax. It carries the same 40 percent top rate.

This unlimited marital deduction also extends to lifetime gifting. You can give unlimited gifts to your spouse while you are living in a tax-free manner.

There is a caveat to the above: the unlimited marital deduction is only available to spouses who are citizens of the United States.

Why would this stipulation be in place? The reason why the powers that be do not mind if you leave everything to your spouse tax-free is because the estate tax will still be a factor when your surviving spouse dies.

This is why the utilization of the unlimited marital deduction is not a comprehensive estate planning solution. You are just punting the situation down the road if you leave everything to your spouse without implementing any type of a cogent tax efficiency plan.

If the unlimited marital deduction was extended to non-citizen spouses, a surviving spouse could return to his or her country of citizenship, inheritance in tow. The United States Internal Revenue Service would not be in a position to collect anything after the surviving spouse passed away.

There are estate planning techniques that can be implemented to gain tax efficiency if you are married to someone who is a citizen of another country. Qualified domestic trusts are often utilized under these circumstances.

Portability of Estate Tax Exclusion

While we are on the topic of the unlimited marital deduction, we should touch upon the matter of estate tax exclusion portability. 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.

Prior to the enactment of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010, the estate tax exclusion was not portable. Essentially, when you died, your exclusion died with you.

A provision contained within this tax relief act made the estate tax exclusion portable in 2011 in 2012. The American Taxpayer Relief Act of 2012 made the portability of the estate tax exclusion permanent.

It is permanent in the sense that there is no particular date upon which portability will expire. However, when it comes to tax laws, nothing is etched in stone, because changes can always be enacted via legislative mandate.

Conclusion

There is a federal estate tax in the United States, and there is also a gift tax. These two taxes on asset transfers are unified. The amount of the unified lifetime exclusion in 2014 is $5.34 million. This is the amount that you can transfer before taxes would become applicable.

There is an unlimited marital deduction. This deduction allows you to transfer unlimited resources to your spouse either while you are living or after you pass away free of transfer taxes.

The utilization of the unlimited marital estate tax deduction can be part of a comprehensive tax efficiency plan. However, it is not a solution in and of itself, because the surviving spouse would be faced with estate tax exposure.

If you are a married individual who is exposed to the estate tax, you should discuss transfer tax efficiency strategies with a licensed estate planning attorney.

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About the Author

Barry Zimmer

Barry H. Zimmer founded THE ZIMMER LAW FIRM in June 1993, to practice in the areas of estate planning, estate administration, and business succession planning. His goal was and continues to be helping clients understand and de-mystify the often confusing world of estate planning in an ever-changing society, and to implement effective estate planning with minimal effort and time investment. The firm works from the belief that planning should always be driven by purpose. As a result, there are no "canned" or pre-set planning solutions. Instead, Zimmer helps clients identify their goals first and then builds estate and business plans based on that understanding.

Barry has been in private practice since receiving his law degree from the University of Cincinnati College of Law in 1979. He earned his Bachelor of Arts Degree from U.C. with Honors, Magna Cum Laude and Phi Beta Kappa, in 1976. He was profiled in the 1990-1991 edition of Who's Who in American Law for contribution to the betterment of contemporary society, and has lectured numerous times on legal topics, and authored several articles and Special Reports on estate planning. He is a former guest columnist on Simply Money, on 91.7 FM, WVXU. He makes occasional guest appearances on radio about estate planning topics, and has been quoted in newspaper articles and columns on estate planning matters.

In Mr. Zimmer's perspective, excellence in implementing trust-based estate plans is but one aspect of his responsibility to clients. Providing reliable guidance and service to families of clients who pass away is just as critical as sound planning at the front end. The firm is very active in settling trusts of all complexity and sizes, and handling probate cases and guardianship proceedings. Zimmer and his staff have successfully handled hundreds of trust estate cases, and are experienced in settling and distributing a wide variety of estate assets to heirs.

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