

## Estate Tax Update



When a Massachusetts resident passes away, every asset that they own is subject to estate tax. Estate tax is imposed by both the Commonwealth of Massachusetts (state estate tax) and the United States government (federal estate tax). While this may seem to create a fairly large burden, both the state and federal estate tax systems provide a credit that allows the deceased individual to pass a certain amount of assets without paying any estate tax.

The value of your estate for estate tax purposes includes everything you own at the time of your death. Thus, you need to add up the value of all of your assets, including real estate, life insurance, retirement accounts, investment accounts, bank accounts, and tangible personal property to determine the gross value of your estate. Many people are surprised to learn the true value of their taxable estate.

In Massachusetts, due to a new law signed by Governor Healey on October 4, 2023, the estate tax credit allows a decedent to pass \$2 million in assets without owing any Massachusetts estate tax. This exemption is a true exemption, meaning that once your estate exceeds \$2 million, tax is paid only on assets valued greater than \$2 million. There is no ability to pass this credit between spouses. Your estate must use your credit when you die, or your credit will be lost. The tax rate in Massachusetts ranges from 8% to 16% depending on the total value of your estate assets.

With respect to federal estate tax, the current exemption allows you to pass \$12.92 million without paying any estate tax. In 2026, unless the current law is extended or changed, the federal exemption will reduce to \$5 million, as adjusted for inflation beginning in 2010. Most professional

estimates indicate that the exemption will be approximately \$6.5 million per person. In 2023, the federal estate tax ranges from 18% to 40%.

An important distinction between the state and federal estate tax systems is the availability of "portability" of the exemptions between spouses on the federal level. If a spouse passes away and does not use all of their \$12.92 million federal exemption, so long as the surviving spouse files a timely portability election claiming the deceased spouse's unused exemption amount, the unused exemption amount may be used by the estate of the surviving spouse, which essentially allows a married couple to pass \$25.84 million without paying any federal estate tax under the current system.

Both the federal and state estate tax systems also provide for a Marital Deduction. The Marital Deduction allows for a deduction on a dollar-for-dollar basis of all property left by the decedent to their surviving spouse. Thus, if a husband owned \$50 million and left it all to his surviving wife at his death, his estate would be entitled to a federal and a state Marital Deduction of \$50 million. Using the Marital Deduction would mean that he would not use his exemption, but his taxable estate would still be zero, and no state or federal estate tax would be due. At first, this seems to be an excellent technique; however, it is upon the second death, when the surviving spouse is holding the entire estate, that the government may be able to take a large percentage of the estate. This is especially problematic at the state level, where portability of the exemption still does not exist, and thus only one estate tax credit would be available to offset taxes.

As a previously deceased spouse's unused credit can not be used at the state level, married couples with a taxable estate often establish sophisticated trusts designed to capture their respective credits. A single person does not have this option available and will need to consider alternative planning, which may include charitable giving. Non-charitable gifting is also an option whether married or single.

Massachusetts does not impose any gift tax. Under the federal system, in 2023, you can gift \$17,000 per person per year without having to report the gift to the Internal Revenue Service. Federal gift tax is only payable when you have gifted more than your lifetime exemption amount (\$12.92 million in 2023). Note well that for each gift you report, you use some of your federal estate tax credit to avoid paying tax at that time, and your lifetime exemption will be reduced proportionately upon your passing.

If you are a Massachusetts resident and your estate is greater than \$2 million dollars, you can take steps now to reduce, or possibly eliminate, any estate tax that would be due upon your passing. As the estate tax system is exceptionally complicated, it is highly recommended that you seek the advice of a qualified advisor, who is well versed in the updated estate tax systems, to assist you.

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