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**Transfer Taxation Part 1: Common**

**Elements of Estate and Gift Taxes**

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## Introduction

The Federal Transfer Tax System addresses the *taxation on the personal transfer of assets* to individuals or entities. Depending upon such circumstances as the amount being transferred, when it is transferred, the manner in which it is being transferred, and the identify of the person or entity to whom it is being transferred, one or more transfer taxes may be accessed. This is true whether the transfer of assets happen during life or at death.

The Federal Transfer Tax System is composed of two parts:

* ***The*** ***Federal*** ***Gift and Estate Tax***
* ***The Generation-Skipping Transfer Tax (GST Tax or GSTT)***

Because of the scope of material, the study of transfer taxation has been broken into segments, with the first two segments addressing the Federal Gift and Estate Tax and the third segment addressing the Generation-Skipping Transfer Tax. This first segment, Part I, will cover the history of transfer taxation and the fundamental elements that are common to both gift taxes and estate taxes. Subsequent lessons will expand this knowledge to address the following subjects:

* Part II – Unique Elements of Estate and Gift Taxes
* Part IV – Generation-Skipping Transfers

Because estate planning deals with planning for the transfer of assets, an understanding of transfer taxation is critical to understanding estate planning strategies. For this reason, knowledge of the material contained herein should be considered as prerequisite to studying more advanced estate planning topics.

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| **Objectives:**  This content is designed to provide a working knowledge of the Federal Gift And Estate Tax System.  With this knowledge, you will be able to:   * Explain the history of the development of federal transfer taxes in the United States. * Explain the structure of the Federal Gift and Estate Tax System. * Identify the common elements shared by federal gift and estate taxes. * Utilize the Unified Transfer Tax Rate Schedule. * Understand the mechanics of the federal Applicable Exclusion Amount and Applicable Credit Amount. |

## Ancient History

For centuries, society has developed procedures for dealing with the transfer of assets at death. As far back as 2900 BC, records indicate the existence of a formal process of asset transfer. The ancient Romans also encouraged *testamentary* (at death) transfers of property so as to prevent widows and orphans from becoming burdens of the state.

Our own laws regarding testamentary passage of property stem from English common law, more specifically from the ***1540 Statute of Wills*** in England. This statute allowed all individuals, with the exception of married women, the insane, and infants, the right to dispose of property by a written will. While English law is the basis for most of our estate planning today, French and Spanish influences can also be found in those states with community property laws.

### The American Concept of an Inheritance Tax

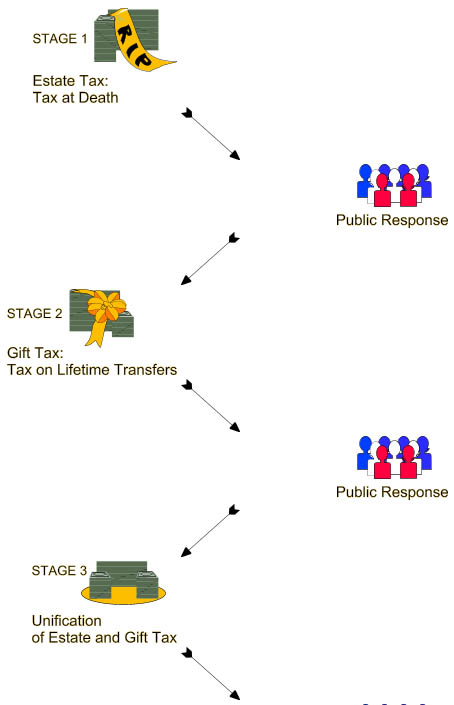
While laws pertaining to the transfer of property have ancient roots, the placement of a tax upon the transfer of property is a relatively modern concept. The philosophy behind the concept in the United States goes back to Thomas Paine, who argued, in his highly influential publication, ***Common Sense***, that *“all hereditary government is in its nature tyranny.”* As he put it, “Hereditary succession… is in its nature an absurdity, because it is impossible to make wisdom hereditary… History informs us that the son of Solomon was a fool.”

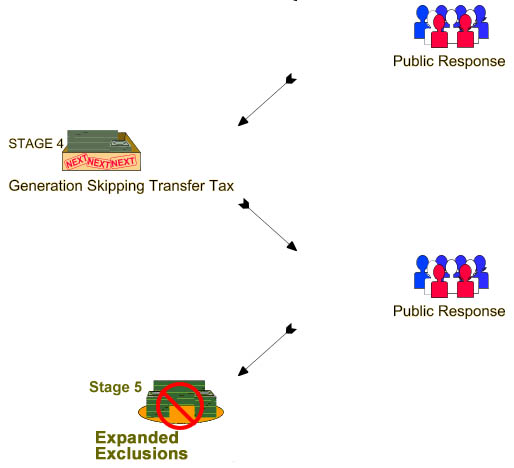
Subsequently, in ***The Rights of Man*** and ***Agrarian Justice***, Paine expanded his critique of *inherited political power* to include a critique of *inherited economic power*. He advocated ***an inheritance tax*** that would be levied upon estates at death that would balance out the unfair distribution of property among the landed gentry. His proposal was for the tax to be used to provide every individual with 15 pounds sterling upon turning age 21 and to give 10 pounds sterling per year to individuals over the age 50.

## History of U.S. Transfer Taxes

Most Americans alive today have never lived in a time without transfer taxes. But transfer taxation in the United States is a fairly modern form of taxation, which developed in stages. Each stage was followed by a change in public behavior that led to Congress responding with the next stage of development. The presentation below will provide information on the progressive development of the transfer tax system.

**Roll the mouse pointer over each development path below:**





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| **Stage 1 Estate Tax: Tax at Death**  In 1916, Congress approved the implementation of an estate tax as a "temporary measure" to raise revenue. |

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| **Stage 1: Public Response**  As this "temporary measure" became more permanent, people began looking for ways to avoid the tax. The answer was simple enough: simply transfer assets before you die. If you did not own it when you died, then no tax was due. |

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| **Stage 2 Gift Tax: Tax on Lifetime Transfers**  To curtail efforts to avoid taxation by making lifetime gifts, Congress enacted a gift tax in 1924. This gift tax co-existed with the estate tax. Two aspects of this arrangement are important for understanding the evolution into our current form of taxation:   1. **The tax rate on gifts was 25% lower than the rate for estates.** 2. **Both taxes were independent of the other**. In other words, each calculation took place with no consideration of the other. |

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| **Stage 2: Public Response**  Because the gift tax was less, the public continued to have an incentive to explore ways to make lifetime transfers, particularly through trusts, and avoid the estate tax with its higher rate. |

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| **Stage 3 Unification of Gift and Estate Tax**  Seeking to do away with the preferential tax treatment of lifetime transfers, the Tax Reform Act of 1976 created the Unified Gift and Estate Tax. This "unified" approach continues to this day. Its features include:   1. **A single tax rate** that is used for calculating both gift and estate taxes. 2. **Consideration of lifetime transfers when computing the estate tax**. In other words, lifetime gifts (after 1976) are added back into the estate when computing the estate tax. A credit is then given for any gift taxes that were paid. |

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| **Stage 3: Public Response**  Another way people had learned to avoid transfer taxes was to make transfers that skipped entire generations.  **Example.** Suppose you have three generations: Parent, Child, and Grandchild. Further suppose that your ultimate goal is to keep everything in the family and transfer assets to the grandchild. This could be accomplished in two ways.  **Transfer through the child.** Here, the Parent makes a transfer to the Child, who subsequently transfers assets to the original donor's Grandchild. This results in ***two taxable transfers***, one for each successive generation.  **Transfer directly to the grandchild**. Here, the Parent skips the next generation and transfers assets directly to the Grandchild. Only ***one taxable transfer*** is made.  This skipping of generations became a popular approach to minimizing taxes, and trusts were particularly useful vehicles for accomplishing multigenerational transfers. |

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| **Stage 4: Generation-Skipping Transfer Tax**  To address the attempts to avoid the tax by skipping generations, the Tax Reform Act of 1976 also introduced a generation-skipping tax that severely curtailed the ability to skip generations without paying a tax. This tax, when applicable, is in addition to any gift or estate tax that may be applied. |

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| **Stage 4: Public Response**  After the boom of the 1990's, there was increased political pressure to raise the amount of an estate that could be transferred free of taxes, with many politicians pushing for the total elimination of the estate tax. |

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| **Stage 5 Expanded Exclusions**  In the year following the Tax Reform Act of 1976, the tax rate schedule that was used to calculate the gift and estate tax went as high as 70% on amounts over $5,000,000. However, a tax credit was available to protect the first $120,000 of taxable transfers from actually having to pay a tax.  With continued political pressure and numerous tax acts later, the tax rate schedule that is currently used to calculate the tax has a maximum rate of 40% on amounts over $1,000,000. Furthermore, for 2016, the available lifetime credit to each person protects the first $5,450,000 (indexed for inflation). This represents a significant rate reduction and a significant expansion of the credit to offset the gift and estate tax.  We will have more to say about the current tax environment on the following pages. |

## Transfer Taxation Today

The outcome of the development of transfer taxation is that today we are left with three types of transfer taxes.

* **Gift Tax**
* **Estate Tax**
* **Generation-Skipping Transfer Tax**

This course will look at the first two types, gift and estate taxes, deferring the generation-skipping transfer tax to a subsequent course. Because the gift tax and estate tax have been "unified," they share many common elements. The following pages will look at these common elements, in some detail, to form the foundation for the subsequent course that will take a deeper look at elements that are unique to each.

## Who is Subject to the Gift and Estate Tax?

U.S. citizens, resident aliens, and nonresident aliens (with assets in the U.S) are all subject to the federal gift and estate tax when making lifetime or at-death transfers of assets. However, the particular assets that are considered and the rules that apply will depend upon their citizenship or residential status. We will discuss some of the different rules as we go, but for now let’s address the assets involved and how resident and nonresident alien status is determined.

### What Assets are Considered?

Your status regarding citizenship or domicile will determine what assets are considered:

* **U.S. Citizens and Resident Aliens (Non-Citizen Residents)** are subject to the federal gift and estate tax on their ***entire estates wherever situated***.
* **Nonresident Aliens** are subject to the federal gift and estate tax only on their ***U.S. “situs” assets***.Unless modified by treaty, this generally includes real and tangible personal property located in the U.S., business assets located in the U.S., and stocks.

### How is Resident and Nonresident Alien Status Determined

For federal gift and estate tax purposes,[[1]](#footnote-1) non-citizens are either resident aliens or nonresident aliens depending upon their domicile:

* **Resident Alien (Non-Citizen Resident)** – A non-citizen person is considered a resident alien and domiciled in the United States if the person lives in the United States with no present intention of leaving the United States. Various factors, such as statements of intent, length of time in the U.S., visa status, etc.) are used to determine domicile. Resident aliens are generally under the same gift and estate tax rules as U.S. citizens.
* **Nonresident Alien** – All other non-citizens who do not meet the test for being a resident alien are classified as nonresident aliens, even though they may be living in the United States for an extended period of time.

## The Gift and Estate Unified Rate Schedule

Having done a brief overview of the history of transfer taxes, we now turn our attention to the current status of federal gift and estate taxes. We first focus on those elements that are common to both gift and estate taxes.

Listed below is the current Federal Unified Rate Schedule that is used in calculating the transfer tax on both lifetime gifts and estates. Under current law, this schedule remains constant for future years.

**Click the highlighted row to learn more.**

**CURRENT UNIFIED GIFT & ESTATE RATE SCHEDULE\***

|  |  |  |  |
| --- | --- | --- | --- |
| Column A  Taxable amount over | Column B  Taxable amount not over | Column C  Tax on amount in Column A | Column D  Rate of tax on excess over amount in Column A |
| $0 | $10,000 | $0 | 18% |
| 10,000 | 20,000 | 1,800 | 20% |
| 20,000 | 40,000 | 3,800 | 22% |
| 40,000 | 60,000 | 8,200 | 24% |
| 60,000 | 80,000 | 13,000 | 26% |
| 80,000 | 100,000 | 18,200 | 28% |
| 100,000 | 150,000 | 23,800 | 30% |
| 150,000 | 250,000 | 38,800 | 32% |
| 250,000 | 500,000 | 70,800 | 34% |
| 500,000 | 750,000 | 155,800 | 37% |
| 750,000 | 1,000,000 | 248,300 | 39% |
| *1,000,000* | *----* | *345,800* | *40%* |

*\*This schedule is for 2013 and subsequent years.*

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| Let’s look at an example. Suppose you wish to calculate the transfer tax on $120,000. Here is how you do it:  **Step 1** – Find the row where $120,000 is between the number in Column A and the number in Column B. As you can see, it is the 7th row, where the range between Column A and Column B is $100,000 to $150,000.  **Step 2** – Identify the tax on the $100,000 amount given in Column A. This is provided in Column C, where we see that the tax on $100,000 is $23,800.  **Step 3** – Now calculate the tax on the amount over $100,000 using the rate found in Column D. Since our amount is $20,000 over the $100,000 for which we have already been provided the tax amount, multiply $20,000 by 30% to get $6,000.  **Step 4** – Add together the tax from Step 2 and Step 3. Thus, our tax on the first $100,000 plus the tax on the next $20,000 equals $23,800 + $6,000, for a total tax of $29,800. |

***Make note of the highest tax rate: 40%.*** This is achieved on all amounts over $1 million. This has not always been the highest rate. As previously discussed, this rate has been much higher in the past. Current legislation, however, dictates that this rate schedule remain fixed unless changed by future legislation.

## Practice – Using the Gift and Estate Rate Schedule

To develop some comfort in working with the Unified Gift and Estate Rate Schedule, use the schedule to answer the questions that follow:

**CURRENT UNIFIED GIFT & ESTATE RATE SCHEDULE\***

|  |  |  |  |
| --- | --- | --- | --- |
| Column A  Taxable amount over | Column B  Taxable amount not over | Column C  Tax on amount in Column A | Column D  Rate of tax on excess over amount in Column A |
| $0 | $10,000 | $0 | 18% |
| 10,000 | 20,000 | 1,800 | 20% |
| 20,000 | 40,000 | 3,800 | 22% |
| 40,000 | 60,000 | 8,200 | 24% |
| 60,000 | 80,000 | 13,000 | 26% |
| 80,000 | 100,000 | 18,200 | 28% |
| 100,000 | 150,000 | 23,800 | 30% |
| 150,000 | 250,000 | 38,800 | 32% |
| 250,000 | 500,000 | 70,800 | 34% |
| 500,000 | 750,000 | 155,800 | 37% |
| 750,000 | 1,000,000 | 248,300 | 39% |
| 1,000,000 | ---- | 345,800 | 40% |

*\*This schedule is for 2013 and subsequent years.*

Enter your results in the blank space provided and click the Submit button.

**Tentative Tax on a transfer of $150,000 = \_\_\_\_\_\_\_\_\_\_\_**

**Tentative Tax on a transfer of $350,000 = \_\_\_\_\_\_\_\_\_\_\_**

Next, identify the marginal rates for the following amounts:

**Marginal rate on a transfer of $450,000 =\_\_\_\_\_\_\_\_\_\_\_%**

**Marginal rate on a transfer of $4,500,000 =\_\_\_\_\_\_\_\_\_%**

The answers to these questions are found on the following page.

## Practice – Using the Gift and Estate Rate Schedule Answer Key

**Tentative Tax on a transfer of $150,000 = $38,800**

**Correct!** The answer is $38,800

**Incorrect.** To find the correct tax, follow these steps:

**Step 1.** Locate the row where $150,000 falls within the range given in the first two columns. This occurs in the range of $150,000 to $250,000.

**Step 2.** The third and fourth columns indicate the tax would be $38,800 plus 32% of any amount over that listed in Column A ($150,000). Since our estate is exactly $150,000, there is nothing further to calculate, so the tentative tax is $38,800.

**Tentative Tax on a transfer of $350,000 = $104,800**

**Correct!** The answer is $104,800.

**Incorrect**. To find the correct tax, follow these steps.

**Step 1.** Locate the row where $350,000 falls within the range listed in Columns A and B. The appropriate range is $250,000 to $500,000.

**Step 2.** Columns C and D indicate that the tax is $70,800 plus 34% of any amount over $250,000. That leads to the following tax calculation:

Tentative Tax = 70,800 + .34(350,000 – 250,000) = 70,800 + 34,000 = $104,800

Next, identify the marginal rates for the following amounts:

**Marginal rate on a transfer of $450,000 = 34%**

**Correct!** The answer is 34%.

**Incorrect.** To find the correct answer, follow these steps:

**Step 1.** Locate the row where $450,000 falls within the range given by Columns A and B. The appropriate range is $250,000 to $500,000.

**Step 2**. Column D gives the marginal rate being charged on every dollar over $250,000 as 34%. Thus, the marginal rate for $450,000 is 34%.

**Marginal rate on a transfer of $4,500,000 = 40%**

**Correct!** The answer is 40%.

**Incorrect**. To find the correct answer, follow these steps:

**Step 1.** Locate the row where $4,500,000 falls within the range given by Columns A and B. The appropriate range is in the last row, which includes everything from $1,000,000 and above.

**Step 2**. Column D gives the marginal rate being charged on every dollar over $1,000,000 as 40%. Thus, the marginal rate is 40%.

## Why Unify the Gift and Estate Tax?

One of the goals in creating a unified gift and estate tax system was to ultimately have everyone make the same transfer tax calculation regardless of the timing of the transfers. Just how this is accomplished is illustrated in the following example.

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| **Mr. Jones’ Story**  Mr. Jones made a taxable gifts during his lifetime (after 1976) of $800,000. He died in 2016 with an estate valued at $6,200,000. How do you take into account his lifetime gift in computing his estate tax?  DocumentationIcon_32px  **Click the icon for the answer.**   |  | | --- | | **Answer**:  First, add together his lifetime taxable gifts (those made after 1976) and his final estate value, deriving a total of $7 million. Then compute the tax on $7 million, deriving his tentative estate tax.  If he paid any prior tax on his lifetime gifts (a likelihood if the bulk of his taxable gifts were made prior to 2002 when the cumulative amount that could be gifted without paying a tax was less than the cumulative $800,000 he gifted), then give him a credit in that amount against his estate tax.  The result is that Mr. Jones’ estate tax is calculated on $7,000,000, which is the same amount he would have used if he had never made lifetime taxable gifts (ignoring potential market value changes). This illustrates how two people with the same size estate will ultimately make the same estate tax calculation, even though one person made lifetime taxable gifts and the other did not. To be sure, there may be value in getting assets out of your estate during life because the appreciation on those assets will not be in your estate when you die; but ignoring market value changes, the tax calculation itself will be the same. | |

The concept illustrated by the example above is very important to remember. ***Lifetime taxable gifts (made after 1976) are added back whenever a federal gift or estate tax return is filed.*** Thus, the calculation is always a cumulative calculation of all taxable transfers since 1976. A credit, which we will discuss later, is available against the calculated tax. Furthermore, if any gift taxes were previously paid on lifetime transfers, then credit against the current tax calculation will also be given for prior taxes paid.

## The Applicable Credit Amount

Every U.S. citizen and resident alien has a lifetime ***credit*** against gift and estate taxes; it is typically referred to as the “***Applicable Credit Amount***.” A “credit” is an amount that you get to ***subtract after a tax is calculated***. So, once we calculate a tentative transfer tax, we get to subtract the credit from the calculated tax.

The Applicable Credit Amount is “***unified***,” meaning it is shared with lifetime transfers (i.e., gifts) and estate transfers (i.e., at death); for this reason, you will sometimes see the Applicable Credit Amount referred to as the “***Unified Credit***.” Thus, the credit can be used to offset calculated gift or estate taxes; but if it is all used up by lifetime taxable gifts, there will be no credit left to protect further assets that transfer at death.

Historically, the Applicable Credit Amount has not always been fully unified between gift and estate taxes. In other words, there have been times in the past when only a portion of the Applicable Credit Amount could be used for lifetime taxable gifts; but today, there is no limit on how much of the credit can be used while alive.

## The Applicable Exclusion Amount

The amount of assets that are protected from taxation by the Applicable Credit Amount is known as the ***Applicable Exclusion Amount***. Stated another way, the Applicable Exclusion Amount is that amount of taxable transferred assets that will result in a tax bill equivalent to the Applicable Credit Amount, resulting in zero taxes owed to the IRS.

In recent years, the Applicable Credit Amount and corresponding Applicable Exclusion Amount available to U.S. citizens and resident aliens have grown considerably. For example, in the decade between 2001 and 2011, we saw the following change:

|  |  |  |
| --- | --- | --- |
| Year | Applicable Credit Amount | Applicable Exclusion Amount\* |
| 2001 | $220,550 | $675,000 |
| 2011 | $1,945,800 | $5,000,000 |

*\*The amount of assets that are protected from taxation by the Applicable Credit Amount.*

In just 10 years, we went from being able to make $675,000 of taxable transfers to making $5,000,000 of taxable transfers without having to pay a single dollar of federal gift and estate taxes. This led to a dramatic decrease in the number of estates that owed gift and estate taxes, and an equally dramatic lowering of concern by most Americans regarding depletion of their estates by estate taxes.

For years following 2011, the growth of the Applicable Credit/Exclusion Amounts has slowed. This is because legislation fixed the Applicable Credit and Exclusion Amounts to 2011 levels, but began adjusting the amount for inflation. Today, their inflation-adjusted values are:

|  |  |  |
| --- | --- | --- |
| Year | Applicable Credit Amount | Applicable Exclusion Amount |
| 2016 | $2,125,800 | $5,450,000 |

While you need not memorize the Applicable Credit Amount, you should commit the Applicable Exclusion Amount to memory. Knowing this amount will be extremely useful in evaluating the tax exposure of any given estate.

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| ***Illustration*:**  In 2012, James, a widower since 1995, made a $1,000,000 taxable gift to his children. He had made no prior taxable gifts and had no transfer tax credits other than his own Applicable Credit Amount.  Next, in 2014, he made another $1,000,000 taxable gift to his children.  Finally, he died in 2016 with a taxable estate valued at $10,000,000. How much of his estate was *NOT* protected by his Applicable Credit/Exclusion Amount?  ***Analysis****:*  James filed a gift tax for the 2012 gift, calculating a tax of $345,800. But his Applicable Credit Amount was more than enough to cover the tax, so no tax was due to the IRS.  When he filed the gift tax return for the 2014 gift, he ***added together the 2012 and 2014 gifts*** (remember, all post-1976 taxable gifts must be added back for both gift tax returns and estate tax returns). Thus, he reported his cumulative lifetime taxable transfers of $2,000,000, with a calculated tax of $745,800. Again, no tax was due because his Applicable Credit Amount was more than enough to cover the tax.  Upon his death, the executor added all post-1976 taxable gifts ($2,000,000) to the value of his estate ($10,000), and calculated the tax on the combined $12,000. The 2016 Applicable Credit of $2,125,800 was sufficient to protect the first $5,450,000 (in this case, the $2,000,000 of lifetime taxable gifts and $3,450,000 of his estate at death). Tax would be due, however, on the remaining $6,550,000 of his estate. Since this will be taxed at the marginal rate of 40%, James’ executor will pay the IRS: $6,550, 000 x 40% = $2,620,000. |

### What About Nonresident Aliens?

Unlike U.S. citizens and resident aliens, who have a generous unified Applicable Exclusion Amount for use with both lifetime gifts and estate transfers, nonresident aliens have an Applicable Exclusion Amount that can only be used for at-death transfer of their estates. Furthermore, the estate-only Applicable Exclusion Amount for nonresident aliens is limited to **$60,000**. This amount is **NOT adjusted for inflation**.

## Gift and Estate Tax Deductions: Charitable and Unlimited Marital

Unlike the applicable credit amount, which is applied after the tentative tax on the gift or estate is calculated, there are certain deductions that actually reduce the taxable amount of the gift or estate ***before*** the tentative tax is calculated. Two important deductions that are available for both gift and estate taxes are:

1. **Charitable Deductions** – Transfers to qualified charities, during one's lifetime or at death receive an offsetting deduction, which removes them from computation of the transfer tax.
2. **The Unlimited Marital Deduction** – Transfers of assets to U.S. citizen spouses are non-taxable events regarding gift and estate taxes due to a “marital deduction” that is provided on the gift or estate tax form. This marital deduction is *unlimited*, so any amount can be transferred to U.S. citizen spouses during life or at death without triggering a gift or estate tax.

Beware, however, that there is no “unlimited marital deduction” for transfers to spouses who are not U.S. citizens, whether they are resident or nonresident in the United States. Special rules apply and additional planning may be needed to minimize taxes on transfers to a non-citizen spouse.

On the following page, we will take a deeper look at the unlimited marital deduction.

## Unlimited Marital Deduction

Under certain conditions, current federal transfer tax laws provide an ***unlimited marital deduction*** for transfers to a U.S. citizen spouse. This means that during life or at death a married person can transfer assets to his or her spouse free of any gift or estate taxes. Why does the IRS allow this? Because they know they will tax all the assets upon the last spouse’s death. Thus, the unlimited marital deduction does not eliminate any transfer taxes on the spouses’ estates, but merely defers taxation until the last spouse’s death.

The following conditions must be met to qualify for the marital deduction.

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| **U.S. Citizenship**  The spouse receiving the assets must be a U.S. citizen. If the IRS were to allow the deduction when the spouse was not a U.S. citizen, there would be a risk that the assets would be removed from the country and thereby escape taxation upon the death of the surviving spouse. However, if the spouse is not a citizen at the decedent’s death, but becomes a citizen by the time the 706 is filed, the marital deduction is allowable.  Note that this means that the transfer to the U.S. citizen spouse can come from another U.S. citizen spouse, from a resident alien spouse, or from a nonresident alien spouse. So long as the transfer is being made to a spouse who is a U.S. citizen, the the unlimited marital deduction is available  When the transfer is made to a non-citizen spouse, the unlimited marital deduction is not available. When one spouse dies, it is possible, however, to make a transfer to a Qualified Domestic Order Trust (QDOT Trust) that will qualify for the marital deduction, but that is a subject for later discussion. For current purposes, direct transfers to a non-citizen spouse simply do not qualify for the unlimited marital deduction. |

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| **Survival of the Spouse**  For transfers to qualify at death, one spouse must be survived by the other. Presumption of survivorship must be stated in the will in the event both spouses die under circumstances that prevent determination of order of death (e.g., car accident, airplane crash, etc.). If not, the state statutes will govern survivorship. Under the Uniform Simultaneous Death Act, which has been adopted in many states, in the event of death within 120 hours of each other and no will that states order of death, then each spouse’s estate would be settled as though there had been no surviving spouse, eliminating the use of the marital deduction for either spouse. |

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| **Married**  One must be legally married in order to qualify for the marital deduction. With the Supreme Court ruling in June 2015, this includes same-sex marriages as well as opposite-sex marriages in all states.  Spouses who are legally separated are still married and, therefore, can pass assets via the marital deduction. |

## Review Exercise

For the following statements, click on the correct response:

1. **Gift taxes are computed using the same rate schedule as for estates:**

* **True**

**Correct**. The Gift and Estate tax use the same rate schedule.

* False

**Incorrect.** The Gift and Estate tax actually do use the same rate schedule.

1. **The amount that can be transferred between U.S. citizen spouses without incurring a transfer tax is:**

* **Limited**

**Incorrect.** The amount that can be transferred between spouses without generating a transfer tax liability is generally unlimited.

* 50%

**Incorrect**. The amount that can be transferred between spouses without generating a transfer tax liability is generally unlimited.

* **Unlimited**

**Correct.** There is no limit to the amount spouses can transfer between each other without generating a transfer tax liability.

1. **When computing the estate tax, lifetime gifts made after 1976 are added back to the gross estate before computing the estate tax:**

* **True**

**Correct**. This makes it possible to have a unified gift and estate tax system.

* False

**Incorrect.** The estate tax calculation is inclusive of lifetime transfers after 1976.

1. **Transfers to qualified charities are NOT deductible on gift and estate tax returns.**

* True

**Incorrect.**

* **False**

**Correct.**

1. **The gift and estate Applicable Exclusion Amount for 2016 is:**

* $5,000,000

**Incorrect.** Try again.

* $5,400,00

**Incorrect.** Try again.

* **$5,450,000**

**Correct.**

* $5,500,000

**Incorrect.** Try again.

1. **The maximum marginal rate on the current Unified Gift and Estate Tax Rate Table is:**

* 18%

**Incorrect.** This is the minimum rate on the schedule. Try again.

* **40%**

**Correct**.

* 50%

**Incorrect.** Try again.

* 70%

**Incorrect**. This was true in 1977, but not today. Try again.

## Summary

The following is a quick review of the key concepts contained in each section of the course:

|  |  |
| --- | --- |
| **Section:** | **Key Points** |
| History of Transfer Taxes | * Key events in the development of transfer taxes. |
| Unified Transfer Tax Rates | * Maximum rate on the 2016 schedule. * How to compute the tax and marginal rate. |
| Applicable Credit/Exclusion Amount | * 2016 Applicable Exclusion Amount. * Difference between the Credit and Exclusion Amounts. * Marginal rate applied to the first dollar of the estate on which a tax is actually paid to the IRS. |
| Deductions | * Unlimited Marital Deduction * Charitable deductions. |

## Conclusion

This concludes the material for this subject. At this time you may return to any sections in which you feel the need for further study

1. *Please note that the determination of resident and nonresident status is different from the determination made for Federal Income Tax purposes.* [↑](#footnote-ref-1)