

TRUSTS & ESTATES LAW ALERT

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2026 Estate and Gift Exemptions, Exclusions, Etc.

FEDERAL

Beginning in 2026, the lifetime basic exclusion has been increased to \$15,000,000 per individual. This amount can be used during lifetime to shield taxable gifts from taxation or upon death to shelter one's assets from the Federal estate tax. Once the exemption is used, a 40% tax applies to the excess. For married couples, whatever is not used by the first spouse to die is available for use by the surviving spouse. Beginning in 2027, this amount will be indexed for inflation. It is important to understand that even though both spouses have the ability to shield \$15,000,000, both exemptions are not combined upon the death of the first to die. For example, assuming the first to die has a taxable estate of \$20,000,000 and has not made taxable gifts during their lifetime, a federal estate tax of \$2,000,000 ($\$5,000,000 \times 40\%$) will be payable. The surviving spouse's \$15,000,000 exemption is not available to shield the excess \$5,000,000 from taxation. However, federal law does provide for an unlimited marital deduction for transfers between the spouses that are both U.S. Citizens whether made during lifetime or upon death. In our example, with proper planning, the estate tax could have been avoided had the first to die simply made a bequest to their spouse equal to the \$5,000,000 excess. While this is typically done as part of a comprehensive estate plan which might include the use of a Marital Deduction Trust coupled with a QTIP election, to do so requires that the assets transferred to the spouse be exposed to estate taxation upon the death of the spouse.

For 2026 the annual gift tax exclusion remains at \$19,000 per donee, per year. Married couples can elect to "split" gifts meaning that a couple can give \$38,000 to a donee in any one year. It is important to remember that the exclusion is cumulative meaning that all gifts made to a donee during the year are aggregated in determining whether the amount of gifts made to a donee exceed the \$19,000/\$38,000 annual exclusion.

In 2026 the marital deduction for gifts made to a spouse that is not a U.S. Citizen is limited to \$194,000.

NEW YORK STATE

For 2026 the New York State Estate Tax Exemption is \$7,350,000. However, unlike for Federal estate tax purposes the unused exemption is not available for use by the surviving spouse. In New York you either use your exemption or it is lost. Further, if the taxable estate is greater than 105% of the amount of the exemption (for 2026 this amount is \$7,717,500) the entire exemption is lost and the estate is fully taxable. For estates between \$7,350,000 and \$7,717,500 the exemption is phased out leading to illogical results. For example, a taxable estate of \$7,350,000 will not have a tax liability. However, a taxable estate of \$7,450,000 will trigger an estate tax of \$265,592. The additional \$100,000 will cost the decedent's survivors, \$256,592. The good news is that there are several planning tools that can be used to avoid this result.

New York does NOT impose a gift tax regardless of the amount or who the recipient of the gift is. However, gifts made within 3 years of death are taken into account for purposes of computing the estate tax that will be due.

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