

## What Is the Marital Deduction?

The marital deduction (I.R.C. Sections 2056 and 2523) **eliminates** both the federal estate and gift tax on transfers of property between a married couple, in effect treating them as one economic unit. The amount of property that can be transferred between them is **unlimited**, meaning that a spouse can transfer all of his or her property to the other spouse, during lifetime or at death, and completely escape any federal estate or gift tax on this first transfer. However, property transferred in excess of the unified credit equivalent will ultimately be subject to estate tax in the estate of the surviving spouse.

The 2010 Tax Relief Act, however, provided for **"portability"** of the maximum estate tax unified credit between spouses if death occurred in 2011 or 2012. The American Taxpayer Relief Act of 2012 subsequently made the portability provision permanent. This means that a surviving spouse can elect to take advantage of any unused portion of the estate tax unified credit of a deceased spouse (the equivalent of \$10,000,000 as adjusted for inflation; \$11,400,000 in 2019). As a result, with this election and careful estate planning, married couples can effectively shield up to at least \$22 million plus as adjusted for inflation from the federal estate and gift tax without use of marital deduction planning techniques. Property transferred to the surviving spouse in excess of the combined unified credit equivalent will be subject to estate tax in the estate of the surviving spouse.

If the surviving spouse is predeceased by more than one spouse, the additional exclusion amount available for use by the surviving spouse is equal to the lesser of \$10 million (\$11,400,000 in 2019 as adjusted for inflation) or the unused exclusion of the last deceased spouse.

## What Requirements Apply to the Marital Deduction?

**To qualify for the marital deduction**, the decedent must have been married and either a citizen or resident of the U.S. at the time of death. In addition, the property interest (1) must be included in the decedent's gross estate, (2) must pass from the decedent to his or her surviving spouse and (3) cannot represent a terminable interest (property ownership that ends upon a specified event or after a predetermined period of time).