

PA INHERITANCE TAX, ESTATE TAX, GIFT TAX, WILLS & OTHER ESTATE MATTERS

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PA INHERITANCE TAX

One of the most frequent questions asked by clients is "what will my family owe in tax upon my death?" Here's information that will help you understand the differences in taxes upon death based upon the relationship of the person who receives the inheritance.

PENNSYLVANIA

OVERVIEW: Inheritance tax is imposed as a percentage of the value of a decedent's estate transferred to beneficiaries by will, heirs by intestacy and transferees by operation of law. The tax rate varies depending on the relationship of the heir to the decedent.

The rates for Pennsylvania inheritance tax are as follows:

- 0 percent on transfers to a surviving spouse or to a parent from a child aged 21 or younger;
- 4.5 percent on transfers to direct descendants and lineal heirs (grandchildren, stepchildren, and parents);
- 12 percent on transfers to siblings; and
- 15 percent on transfers to other heirs (nieces and nephews, same-sex partners and unrelated beneficiaries), except charitable organizations, exempt institutions and government entities exempt from tax.

Property owned jointly between spouses is exempt from inheritance tax.

Effective for estates of decedents dying after June 30, 2012, certain farm land and other agricultural property are exempt from Pennsylvania inheritance tax, provided the property is transferred to eligible recipients.

Inheritance tax payments are due upon the death of the decedent and become delinquent nine months after the individual's death. If inheritance tax is paid within three months of the decedent's death, a 5 percent discount is allowed.

What property is subject to inheritance tax?

All real and tangible personal property of a PA resident decedent, including but not limited to cash, oil and gas rights, automobiles, furniture, antiques and jewelry located in Pennsylvania at the time of the decedent's death, is taxable.

All intangible property of a resident decedent, including stocks, bonds, bank accounts, loans receivable, etc., is also taxable, regardless of where it is located at the decedent's death.

In the case of a nonresident decedent, all real and tangible personal property located in Pennsylvania at the decedent's death is taxable. Intangible personal property of a nonresident decedent is not taxable. Jointly-owned property with right of survivorship, except between husband and wife, including but not limited to real estate, securities and bank accounts, is taxable based on the decedent's interest in the joint property. This interest is calculated by dividing the value of the joint property by the number of joint owners at the time of the decedent's death.

Joint property is taxable even in situations where the decedent's name was added as a matter of convenience. Further, if the decedent created the joint interest in the property within a year of his death, the full value of the property is taxable in the decedent's estate, less \$3,000.

Can funeral expenses and the decedent's unpaid bills be deducted from the amount subject to tax?

Yes, unsatisfied liabilities incurred by the decedent prior to his death are deductible against his taxable estate. In addition to debts incurred by the decedent or the estate, costs of administration of the estate and funeral and burial expenses are deductible, including attorney fees, fiduciary fees and the cost of the burial lot, tombstone or grave marker.

For the sake of convenience, I put my mother's name on my savings account. Recently my mother died, and now I am told I have to pay inheritance tax on my own money. Is this true?

Under inheritance tax law, the account was jointly owned, since you and your mother had equal access to the account. Therefore, in this case, the survivor is taxed on one-half of the amount in the account.

What is the family exemption and how much can be claimed?

The family exemption is awarded to certain individuals so they may retain or claim certain types of a decedent's property, in accordance with Section 3121 of the Probate, Estates and Fiduciaries Code. For decedents who died after Jan. 29, 1995, the family exemption is \$3,500.

Who is entitled to claim the family exemption?

The family exemption may be claimed by the spouse of a decedent who was a resident of Pennsylvania. If there is no spouse or if the spouse forfeited his rights, any child of the decedent who is a member of the decedent's household may claim the exemption. In the event there is no spouse or child, the exemption may be claimed by a parent or parents who are members of the decedent's household. The family exemption is allowed against assets passed on with or without a will.

Is an inheritance considered taxable for PA personal income tax purposes?

No, inheritances are not taxable for PA personal income tax purposes. However, if you qualify for Tax Forgiveness, you will need to include as income on PA Schedule SPA the value of any inheritance received the prior year.

If an individual dies before he reaches the age of 59 1/2, is the decedent's IRA or 401K subject to PA inheritance tax?

IRAs typically are not subject to inheritance tax, unless the decedent was considered disabled. For 401Ks, the same provision applies unless the owner of a plan could have accessed the plan during his lifetime, without penalty. For most plans, the right to access without penalty is not realized until retirement age is reached, usually 62 or 65 years of age.

Who files the inheritance tax return?

Inheritance tax returns must be filed within nine months of a decedent's death by the person named in the will as personal representative or the individual approved as administrator by the Register of Wills, in cases where no will exists at death. If no personal representative or administrator is named and property or transfers exist, then the person(s) receiving the property must file and pay the tax.

Where is the inheritance tax return to be filed?

If the decedent was a Pennsylvania resident at death, the inheritance tax return must be filed in duplicate with the register of wills in the decedent's county of residence. If the decedent was not a resident of Pennsylvania but had assets located in Pennsylvania, the inheritance tax return must either be filed in duplicate with the register of wills of the county where assets are located, when letters testamentary or letters of administration are obtained there, or the return must be filed directly with the PA Department of Revenue, when letters testamentary or letters of administration are provided by a jurisdiction outside Pennsylvania.

Do safe deposit boxes have to be inventoried after someone dies?

Yes. Because safe deposit boxes may contain assets subject to Pennsylvania inheritance tax, the law requires an inventory prior to the removal of contents of any safe deposit box owned by a decedent or owned by a decedent and anyone other than a spouse. No inventory is required for safe deposit boxes jointly owned by husband and wife, so long as one spouse remains alive.

Who may enter a safe deposit box after the death of a decedent?

No one is allowed to enter a safe deposit box, not even a joint owner, except to remove a will and/or burial instructions, which must be removed in the presence of a bank employee. The bank employee must complete PA Form REV-487 (Entry Into A Safe Deposit Box To Remove A Will Or Cemetery Deed) to record the entry and mail it to the PA Department of Revenue. The contents of safe deposit boxes must be inventoried before they can be removed.

Who conducts safe deposit box inventories?

A representative of the estate must present at the inventory. If the decedent and a surviving joint owner owned the box, the surviving owner should be present. Additionally, an attorney representing the estate may be present.

How do I arrange an inventory of a safe deposit box?

An estate representative must provide written notice to the department at least seven days in advance of a safe deposit box inventory. The notice must include the name of the estate and the person entering the box; the name and address of the financial institution where the box is located; and the date and time of entry. The notice must be delivered to the department at the address below by the U.S. Postal Service with return receipt service, and a copy of the notice should be provided to the financial institution where the box is located.

PA Dept. of Revenue
Safe Deposit Box Unit
PO Box 280601
Harrisburg, PA 17128-0601

At the time of entry, the estate representative must provide a statement to the financial institution verifying notice was provided to the department. Within 20 days of entry, the estate representative must return a completed Safe Deposit Box Inventory form, REV-485, to the department's Safe Deposit Box Unit.

FEDERAL ESTATE TAX

What is Federal Estate Tax?

The Estate Tax is a tax on your right to transfer property at your death. It consists of an accounting of everything you own or have certain interests in at the date of death. The fair market value of these items is used, not necessarily what you paid for them or what their values were when you acquired them. The total of all of these items is your "Gross Estate." The includible property may consist of cash and securities, real estate, insurance, trusts, annuities, business interests and other assets.

What is the "Taxable Estate"?

Once you have accounted for the Gross Estate, certain deductions (and in special circumstances, reductions to value) are allowed in arriving at your "Taxable Estate." These deductions may include mortgages and other debts, estate administration expenses, property that passes to surviving spouses and qualified charities. The value of some operating business interests or farms may be reduced for estates that qualify.

After the net amount is computed, the value of lifetime taxable gifts (beginning with gifts made in 1977) is added to this number and the tax is computed. The tax is then reduced by the available unified credit.

Most relatively simple estates (cash, publicly traded securities, small amounts of other easily valued assets, and no special deductions or elections, or jointly held property) do not require the filing of an estate tax return.

What are the minimum estate values that would require the filing of an Estate Tax Return?

A filing is required for estates with combined gross assets and prior taxable gifts exceeding . . .

\$1,500,000 in 2004 - 2005

\$2,000,000 in 2006 - 2008

\$3,500,000 for decedents dying in 2009

\$5,000,000 or more for decedent's dying in 2010 and 2011 (note: there are special rules for decedents dying in 2010)

\$5,120,000 in 2012

\$5,250,000 in 2013

\$5,340,000 in 2014

What happens to your deceased spouse's unused exemption?

Beginning January 1, 2011, estates of decedents survived by a spouse may elect to pass any of the decedent's unused exemption to the surviving spouse. This election is made on a timely filed estate tax return for the decedent with a surviving spouse. Note that simplified valuation provisions apply for those estates without a filing requirement absent the portability election.

What is included in the Estate?

The Gross Estate of the decedent consists of an accounting of everything you own or have certain interests in at the date of death. The fair market value of these items is used, not necessarily what you paid for them or what their values were when you acquired them. The total of all of these items is your "Gross Estate." The includible property may consist of cash and securities, real estate, insurance, trusts, annuities, business interests and other assets. Keep in mind that the Gross Estate will likely include non-probate as well as probate property.

I own a 1/2 interest in a farm (or building or business) with my brother (sister, friend, other). What is included?

Depending on how your 1/2 interest is held and treated under state law, and how it was acquired, you would probably only include 1/2 of its value in your gross estate. However, many other factors influence this answer, so you would need to visit with a tax or legal professional to make that determination.

What is excluded from the Estate?

Generally, the Gross Estate does not include property owned solely by the decedent's spouse or other individuals. Lifetime gifts that are complete (no powers or other control over the gifts are retained) are not included in the Gross Estate (but taxable gifts are used in the computation of the estate tax). Life estates given to the decedent by others in which the decedent has no further control or power at the date of death are not included.

What deductions are available to reduce the Estate Tax?

1. Marital Deduction: One of the primary deductions for married decedents is the Marital Deduction. All property that is included in the gross estate and passes to the surviving spouse is eligible for the marital deduction. The property must pass "outright." In some cases, certain life estates also qualify for the marital deduction.
2. Charitable Deduction: If the decedent leaves property to a qualifying charity, it is deductible from the gross estate.
3. Mortgages and Debt.
4. Administration expenses of the estate.
5. Losses during estate administration.

Will my same-sex spouse be considered a surviving spouse for purposes of the marital deduction for estate tax purposes?

For federal tax purposes, the terms "spouse," "husband," and "wife" includes individuals of the same sex who were lawfully married under the laws of a state whose laws authorize the marriage of two individuals of the same sex and who remain married. Also, the Service will recognize a marriage of individuals of the same sex that was validly created under the laws of the state of celebration even if the married couple resides in a state that does not recognize the validity of same-sex marriages.

However, the terms "spouse," "husband and wife," "husband," and "wife" do not include individuals (whether of the opposite sex or the same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state, and the term "marriage" does not include such formal relationships.

All property that is included in the gross estate and passes to the surviving spouse is eligible for the marital deduction. The property must pass "outright." In some cases, certain life estates also qualify for the marital deduction.

Gift Tax

The gift tax is a tax on the transfer of property by one individual to another while receiving nothing, or less than full value, in return. The tax applies whether the donor intends the transfer to be a gift or not.

The gift tax applies to the transfer by gift of any property. You make a gift if you give property (including money), or the use of or income from property, without expecting to receive something of at least equal value in return. If you sell something at less than its full value or if you make an interest-free or reduced-interest loan, you may be making a gift.

Who pays the gift tax?

The donor is generally responsible for paying the gift tax. Under special arrangements the donee *may* agree to pay the tax instead. Please visit with your tax professional if you are considering this type of arrangement.

What is considered a gift?

Any transfer to an individual, either directly or indirectly, where full consideration (measured in money or money's worth) is not received in return.

What can be excluded from gifts?

The general rule is that any gift is a taxable gift. However, there are many exceptions to this rule. Generally, the following gifts are not taxable gifts.

1. Gifts that are not more than the annual exclusion for the calendar year.
2. Tuition or medical expenses you pay for someone (the educational and medical exclusions).
3. Gifts to your spouse.
4. Gifts to a political organization for its use.

In addition to this, gifts to qualifying charities are deductible from the value of the gift(s) made.

May I deduct gifts on my income tax return?

Making a gift or leaving your estate to your heirs does not ordinarily affect your federal income tax. You cannot deduct the value of gifts you make (other than gifts that are deductible charitable contributions).

How many annual exclusions are available?

The annual exclusion applies to gifts to each donee.

In other words, if you give each of your children . . .

\$11,000 in 2002-2005

\$12,000 in 2006-2008

\$13,000 in 2009-2012

\$14,000 on or after January 1, 2013

the annual exclusion applies to each gift. The annual exclusion remains \$14,000 in 2014.

What if my spouse and I want to give away property that we own together?

You are each entitled to the annual exclusion amount on the gift.

Together, you can give . . .
\$22,000 to each donee (2002-2005)
\$24,000 (2006-2008)
\$26,000 (2009-2012)
\$28,000 on or after January 1, 2013 (including through 2014).

What is "Fair Market Value?"

Fair Market Value is defined as: "The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. The fair market value of a particular item of property includible in the decedent's gross estate is not to be determined by a forced sale price. Nor is the fair market value of an item of property to be determined by the sale price of the item in a market other than that in which such item is most commonly sold to the public, taking into account the location of the item wherever appropriate." Regulation §20.2031-1.

CHARTS OF FEDERAL ESTATE TAX AND GIFT TAX EXCLUSIONS

Federal Estate Tax Basic Exclusion Amount	
Year of Death	File Return if Estate Value is more than:
2002 and 2003	\$1,000,000
2004 and 2005	\$1,500,000
2006, 2007, and 2008	\$2,000,000
2009	\$3,500,000
2010 and 2011	\$5,000,000
2012	\$5,120,000
2013	\$5,250,000
2014	\$5,340,000

Federal Gift Tax Basic Exclusion Amount		
Year of Gift	Individual Gift Per Each Child	Gift From Parents Per Each Child
2002-2005	\$11,000	\$22,000
2006-2008	\$12,000	\$24,000
2009-2012	\$13,000	\$26,000
2013- 2014	\$14,000	\$28,000

Other Exclusions: Non-Taxable Gifts include: 1. Gifts that are not more than the annual exclusion for the calendar year; 2. Tuition or medical expenses you pay for someone (the educational and medical exclusions); 3. Gifts to your spouse; 4. Gifts to a political organization for its use.

OTHER COMMONLY ASKED QUESTIONS

If you gave your entire estate to a child, but failed to survive that gift for a period of one year, would your Estate be exempt from PA Inheritance Tax?

No. That gift would be subject to a 4.5% inheritance tax to the extent it exceeded \$3,000. Also, suppose you give your house to your son but reserve the right to live there for the rest of your life. Because you reserved this right, the entire value of the house would be taxed upon your death.

What if you want to transfer your family-owned business?

Act 52 of 2013 added an exemption to PA Inheritance Tax for the transfer of a "qualified family-owned business" for those dying after June 30, 2013. In general terms, to meet this exemption, the business must have fewer than 50 employees and a net book value of less than \$5 million and it must pass to a spouse, lineal descendants (children, grandchildren, etc.), siblings, the lineal descendants of siblings, ancestors (parents, grandparents) and siblings of ancestors.

What's the benefit of being married for PA Inheritance Tax Purposes?

The most important exemption to PA Inheritance Tax is for property that is owned jointly by a husband and wife. Therefore, if you and your spouse own all of your property jointly, upon death of the first spouse there will be no Pennsylvania inheritance tax. As a technical matter, property owned individually by one spouse is subject to tax even though it passes to the surviving spouse under the terms of a Will. However, since the current tax rate on property passing to a spouse is zero percent, it doesn't create any tax.

What happens if a child dies and his assets pass to his parent?

Upon the death of a child age 21 or younger, there is no longer any tax on assets that pass to that child's parent or stepparent.

Where should I plan to spend the Last Chapter of my Life?

2014 State Estate Tax and Inheritance Tax Chart

State	Type of Death Tax	2014 Exemption	2014 Top Tax Rate
*Connecticut	Estate Tax	\$2,000,000	12%
***Delaware	Estate Tax	\$5,340,000	16%
District of Columbia	Estate Tax	\$1,000,000	16%
***Hawaii	Estate Tax	\$5,340,000	16%
Illinois	Estate Tax	\$4,000,000	16%
Iowa	Inheritance Tax	\$25,000	15%
Kentucky	Inheritance Tax	Up to \$1,000	16%
Maine	Estate Tax	\$2,000,000	12%
Maryland	Estate Tax, Inheritance Tax	\$1,000,000, \$0	16%, 10%
Massachusetts	Estate Tax	\$1,000,000	16%
Minnesota	Estate Tax	\$1,200,000	16%
Nebraska	Inheritance Tax	Up to \$40,000	18%
New Jersey	Estate Tax, Inheritance Tax	\$675,000, Up to \$25,000	16%, 16%
New York	Estate Tax	****\$1,000,000 or \$2,062,500	16%
Oregon	Estate Tax	\$1,000,000	16%
Pennsylvania	Inheritance Tax	\$3,500	15%
***Rhode Island	Estate Tax	\$921,655	16%
**Tennessee	Estate Tax	\$2,000,000	9.5%
Vermont	Estate Tax	\$2,750,000	16%
***Washington	Estate Tax	\$2,012,000	20%

* Also collects a state [gift tax](#)

** Referred to as an "inheritance tax" in state statutes, but it's really an estate tax

*** Exemption is adjusted for inflation on an annual basis

**** The exemption is \$1,000,000 prior to April 1, 2014, and \$2,062,500 effective April 1, 2014

What happens to your Estate if you are married without a will at the time of death?

The law controlling what portion of the decedent's estate the surviving spouse receives can be found at 20 Pa.C.S.A. § 2102. It can be summarized as follows:

- No surviving children. If the decedent was survived by his or her spouse and had no surviving children or parents, the surviving spouse receives the decedent's entire estate. However, if the decedent was survived by his or her spouse and one or both parents, but had no surviving children, the surviving spouse would be entitled to the first \$30,000.00 of the estate, plus one-half of the remaining estate, if any. The decedent's parents' share is dependent on other factors discussed below.

- Surviving children. If the decedent was survived by his or her spouse and had surviving children, all of whom were also the surviving spouse's children, the surviving spouse will receive the first \$30,000.00 of the estate, plus one-half of the remaining estate, if any. However, if the decedent was survived by his or her spouse and had surviving children, at least one of whom was not also the surviving spouse's child, the surviving spouse will only receive one-half of the estate. Under these circumstances, the surviving spouse would not be entitled to the first \$30,000.00. The reason for the difference in these two scenarios is that the law presumes that the surviving spouse will care and provide for children of his or her own, but does not make the same presumption for children that are not his or hers. Regardless of how the child was treated by the surviving spouse during the decedent's lifetime, the legislature did not want to take the chance that that child would not be provided for after the decedent's death.

What if there is no surviving spouse? What about the portion of the estate that is not going to the surviving spouse?

The laws of Intestate Succession at 20 Pa.C.S.A. § 2103, provide for the share of the estate, if any, that is not going to the surviving spouse or which passes if there is no surviving spouse. This section of the statute regulates the passing of the remaining share.

1. Children. First, to the children of the decedent.
2. Parents. If no children survive the decedent, the decedent's parents share the estate equally; if only one parent survives, the surviving parent takes the entire estate. Remember, if the decedent was survived by a spouse, the spouse will take the first \$30,000.00 and one-half of the remaining estate. So, in the event there is a surviving parent of the decedent, the surviving spouse will get \$30,000.00 plus half the remaining estate and the surviving parent will receive the other one-half of the remaining estate. If both parents survive the decedent, they will share the remaining one-half.
3. Brother, Sister, or their Children. If no children and no parents survive the decedent, then the estate will be distributed to the children of the decedent's parents (the decedent's siblings and their children).
4. Grandparents. If no siblings survive the decedent, then the grandparents of the decedent shall receive, one-half to the paternal grandparents and one-half to the maternal grandparents, and their children.
5. Uncles, Aunts, and their Children and Grandchildren. If no grandparents survive the decedent, the estate is distributed to the decedent's uncles, aunts, and their children and grandchildren.
6. Commonwealth. If no one mentioned above survives the decedent, then the Commonwealth of Pennsylvania collects.

