# WILL MY HEIRS BE FORCED TO PAY AN INHERITANCE TAX IN CALIFORNIA?

*"In this post, we will look at taxes that can be imposed on asset transfers."*

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*In the state of California, there is no inheritance tax, and there is no state-level estate tax. Californians do have to be concerned about the federal estate tax.*

*The estate tax would be a factor for you if the value of your estate exceeds the amount of the federal estate tax exclusion. For 2015, the exclusion is $5.43 million.*

You pay taxes all of your life, and your estate is comprised of assets that you were able to hang on to after paying all of these taxes. Since you already paid these innumerable taxes, it would be logical to assume that the event of your passing would not be a taxable one.

However, the powers that be see it another way if you have been financially successful. In this post we will look at taxes that can be imposed on asset transfers.

## Inheritance Tax

Before we get into the taxes that actually impact Californians, we should clear up a misconception. Many people think that an inheritance tax and an estate tax are the same thing. In fact, these are two different types of taxes.

An inheritance tax would be imposed on asset transfers to each nonexempt inheritor. There is no inheritance tax on the federal level, but there are some states in the union that impose estate-level inheritance taxes.

We practice law in the state of California. Fortunately, there is no inheritance tax in California. For your information, the states that do impose inheritance taxes are Maryland, New Jersey, Pennsylvania, Iowa, Kentucky, Indiana, and Nebraska.

In states that have state-level inheritance taxes, close relatives like spouses, children, and parents are typically exempt.


## *Estate Tax*

Unlike an inheritance tax, an estate tax is imposed on the entirety of the taxable portion of the estate in question. It is not levied on transfers to each individual inheritor who is not exempt.

There is a federal estate tax that is applicable in all 50 states. This tax carries a 40 percent maximum rate that can significantly reduce the wealth that you are passing along to your loved ones.

There is a federal estate tax credit or exclusion that stands at $5.43 million in 2015.

You can bequeath $5.43 million to people other than your spouse free of the estate tax. The rest would be subject to taxation unless you take steps to gain estate tax efficiency.

It is possible to transfer unlimited assets to your spouse without incurring any estate tax exposure, because there is an unlimited marital estate tax deduction. However, leaving everything to your spouse tax-free is not an estate planning solution, because your spouse would then be faced with estate tax exposure.

The estate tax exclusion is portable between spouses. This means that a surviving spouse can use the exclusion that was afforded to his or her deceased spouse. Using the figure that is in place for 2015, the surviving spouse would have a total exclusion of $10.86 million.

## *Federal Gift Tax*

In addition to the federal estate tax, there is also a federal gift tax, and two taxes are unified. The $5.43 million exclusion applies to the combination of taxable gifts that you give while you are living, along with the estate that you are passing along to your heirs.

## *State-Level Estate Taxes*

A number of states in the union impose state-level estate taxes. Here in California there is no state estate tax. However, if you own valuable property in a state that has an estate tax, the tax could be a factor after you pass away.

## *Capital Gains Tax*

We should also look at the capital gains tax. This tax is potentially applicable when assets appreciate.

If you are passing along appreciated assets to an heir, will the heir be forced to pay capital gains taxes on the appreciation?

The answer is no, because the heir would receive a step up-in basis. For capital gains purposes, the value of the appreciated assets would be equal to their value at the time of acquisition. However, the inheritor would be responsible for future gains if the assets continue to appreciate.

## ABOUT THE AUTHOR

### ROY W. LITHERLAND

Roy Litherland has been providing legal services in Santa Clara and Santa Cruz Counties continuously since 1975.

Roy has an undergraduate degree in accounting from Indiana State University, and a Juris Doctor degree from Indiana University, where he graduated cum laude. In law school he was a recipient of the Dean Faust Award and received awards and honors in income taxation and estate and gift taxation.

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## *Summary*

In the state of California, there is no inheritance tax, and there is no state-level estate tax. Californians do have to be concerned about the federal estate tax.

The estate tax would be a factor for you if the value of your estate exceeds the amount of the federal estate tax exclusion. For 2015, the exclusion is $5.43 million.

If you are exposed to the federal estate tax, there are various different things that you can do to mitigate your exposure. The optimal estate tax efficiency strategy will vary depending on the circumstances.

To explore your options, schedule a consultation with a licensed estate planning attorney. Your lawyer will gain an understanding of your situation, become apprised of your objectives, and make the appropriate recommendations.

## *References*

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