



2026 New York Estate Tax Planning

PROFESSIONAL OPINION



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amounts, couples with a combined net worth over the New York exclusion amount (i.e., \$7,350,000 or higher) should engage in coordinated planning to avoid the New York estate tax.

Strategies may include asset allocation between spouses during their lifetimes and utilization of testamentary techniques, such as credit shelter trusts.

ESTATE PLANNING

Allocation of Assets

Asset allocation involves strategically retitling and transferring assets between spouses to minimize the potential of New York estate tax liability on the death of the surviving spouse. Because the New York exclusion amount is not portable, the goal of asset allocation is to evenly allocate spousal assets so that the first spouse to die owns sufficient assets to shelter them from the New York estate tax (described below), while ensuring use of the full New York exclusion amount.

2026 ESTATE TAX UPDATES

Federal and New York Estate Tax

The One Big Beautiful Bill Act, which became law on July 4, 2025, permanently preserved and increased the federal estate tax exclusion amount set under the 2017 Tax Cuts and Jobs Act.

As of January 1, 2026, the basic exclusion amount from federal estate tax increased to \$15,000,000. Under this regime, an individual can transfer \$15,000,000 of assets during life and/or upon death free of federal estate tax.

In contrast, the basic exclusion amount from New York estate tax in 2026 is \$7,350,000. The New York exclusion amount increases annually based upon a cost-of-living adjustment tied to inflation.

Portability of Exclusion Amounts

“Portability” remains a key feature of the federal estate tax regime. A surviving spouse may transfer his or her deceased spouse’s unused federal exclusion amount to himself or herself for use during life or upon death. This allows a married couple to transfer a combined total of \$30,000,000 of assets without incurring federal estate tax.

New York does not allow portability of any unused exclusion amount to a surviving spouse. The New York exclusion amount is “use it or lose it,” requiring careful consideration and planning to avoid New York estate tax.

Due to the discrepancy between the New York and federal exclusion

Credit Shelter Trusts

Once assets are allocated between spouses, testamentary provisions should be updated to include trust planning so that the first spouse to die can shelter assets from future taxation upon the death of the surviving spouse.

One effective sheltering technique is the use of a Credit Shelter Trust ("CST") for the benefit of a surviving spouse. Upon the death of the first spouse, a CST, established by Will or Revocable Trust, is funded with the maximum amount that can pass free of both the New York and federal estate tax (\$7,350,000). The remainder of the deceased spouse's assets can pass to the surviving spouse outright or in trust without causing estate taxation by using the unlimited marital deduction.

The value of the assets in a funded CST plus appreciation is sheltered by the deceased spouse's exclusion amount while remaining accessible to the surviving spouse as beneficiary. Despite terms allowing access to the income and principal of a CST to the surviving spouse, the CST assets will not be included in the surviving spouse's estate upon death, effectively sheltering \$7,350,000 or more from both New York and federal estate tax.

With proper asset allocation and use of available testamentary planning techniques, such as use of a CST, New York estate tax liability can be deferred, significantly decreased or completely eliminated at the death of the surviving spouse.

EXAMPLES

Example 1: Assume Spouse 1 died in 2026 with an estate valued at \$10,000,000, and his estate plan leaves all assets to his spouse. Spouse 1's estate will not be estate taxable in New York or at the federal level due to use of the unlimited marital deduction. Further assume that Spouse 2, who had \$3,000,000 in assets, also dies in 2026. As beneficiary of Spouse 1's estate, Spouse 2 died with an estate valued at \$13,000,000. Thus, the difference between Spouse 2's \$13,000,000 and the New York exclusion amount of \$7,350,000 results in \$5,650,000 being subject to New York estate tax. New York estate tax of \$1,546,800 is owed by Spouse 2.

Example 2: Assume that Spouse 1 allocates \$2,000,000 of his \$10,000,000 to Spouse 2 during life. Further assume that Spouse 1 died in 2026 with an estate valued at \$8,000,000, and his estate plan includes a properly structured CST. An allocation of \$7,350,000 is made to the CST, fully utilizing the New York exclusion amount. The balance of \$650,000 (\$8,000,000 - \$7,350,000) can pass outright to the surviving spouse without incurring estate tax. Moreover, the CST assets are excluded from Spouse 2's gross taxable estate since Spouse 1's exclusion amounts were used.

Upon the death of Spouse 2, she has an estate valued at \$5,650,000 (i.e., the sum of Spouse 2's orig-

inal \$3,000,000, the \$2,000,000 allocated from Spouse 1, and \$650,000 received from Spouse 1's estate). Spouse 2's estate is not subject to the New York or federal estate tax because the value of her estate is below the New York exclusion amount and the federal exclusion amount. The full value of the CST (\$7,350,000) and Spouse 2's remaining assets (\$5,650,000) pass in accordance with their estate plan with no estate tax liability, saving over \$1,500,000 in estate tax.

CONCLUSION

Although the federal exclusion amount remains generous in 2026, New York residents, and particularly married couples, face planning challenges due to the lower New York exclusion amount and the lack of portability. Strategic asset allocation and careful planning with trusts continue to be essential tools in minimizing or eliminating New York and federal estate tax exposure.

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