



# Tax Planning: Estate Taxes Part 2 of 3



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*Last issue I explained that the fundamental focus of any Elder Law practice is **Estate Planning**: Listening to clients and preparing documents to provide what will happen when a client dies or becomes incapacitated.*

I listen to the client's questions and concerns and address them. In addition, I need to consider gift, estate, and inheritance taxes, as well as income and capital gain taxes with respect to any estate plan I recommend.

In this article, I'll focus on the **Federal Gift Tax** and the **New Jersey Inheritance Tax**.

The **Federal Gift Tax** system is probably the most misunderstood of the tax systems. Pretty much everyone has an understanding that we are allowed to give away a certain amount of money per person per year. Some people think that amount is \$10,000; and some are savvy enough to know that the **federal gift tax annual exclusion** is now \$13,000 per person per year.

It seems to me that most of the people who should worry about the federal gift tax annual exclusion don't; and that the

people who don't need to worry about it follow the rules to the letter.

What even some accountants are not aware of is that we all have a **lifetime gift tax exclusion** in the amount of 1 million dollars! Therefore, if you give more than \$13,000 to someone in one calendar year, you are required to file a **federal gift tax return (Form 709)** to report the gift; however you simply apply part of your \$1 million lifetime gift tax exclusion to the "taxable gift", resulting in no gift tax. If you are thinking about giving more than \$1 million, please call my office immediately! Seriously, if you do give away more than \$1 million during your lifetime, you will incur an immediate gift tax, which is that federal estate tax rates which can be close to if not exceed 50%.

If a husband and wife desire to make a gift, keep in mind that the **spouse can consent to the gift** and thereby double the amount that can be given in one calendar year from \$13,000 to \$26,000, even if the money comes from just one of the spouse's funds.


The **New Jersey Inheritance Tax** system is quite different than


the federal or New Jersey estate tax systems. In some ways it is easier to remember, because it is based upon the **relationship** between the person who has died and the beneficiaries of the estate.


One point I want to stress at the outset is that the **New Jersey Inheritance Tax** is imposed upon the transfer of property by reason of death, regardless how the property passes at death. In other words, if you inherit a bank account because it was made "**payable on death**" to you, it is taxable. If you owned property as **joint tenants with right of survivorship (JTWROS)**, and the other person dies, you inherit the deceased person's one half interest by reason of death, and therefore it is taxable. When people inherit property because of how the property was titled (eg., jointly) or because the property (eg. IRA's, annuities, life insurance) has a designated beneficiary, we call this type of property **Anon-probate property** because it passes to the beneficiary outside of the Will. It is, however, subject to the New Jersey inheritance tax.



New Jersey inheritance tax is imposed upon the transfer of property to certain classes of people.

 Any one in **Class A** is exempt from the New Jersey inheritance tax: spouses, children, stepchildren, grandchildren, and parents.

 Anyone in **Class C** may receive up to \$25,000 free of New Jersey inheritance tax, but must pay an 11% tax on the excess: brothers and sisters, daughters in law and sons in law.

 Persons in **Class D** (everyone else) must pay a 15% New Jersey inheritance tax unless the bequest is **less than \$500**. Charities are exempt from the tax.

*Oh, and by the way, there is no **Class B!***

Unlike the federal estate tax system, which considers whether the deceased was the owner of his or her **life insurance**, New Jersey inheritance tax is not imposed upon any life insurance proceeds which are payable to a named beneficiary, regardless of the beneficiary's "class". It is important to keep this in mind and to not designate your estate as the beneficiary of life insurance if it is going to have to any non-class A beneficiaries. For example, if you want to leave money to a friend (Class D) or a brother or sister, consider leaving them life insurance proceeds by designating them as beneficiaries, rather than leaving them other assets in your estate, which would be subject to the New Jersey inheritance tax.

Finally, it is important to keep the New Jersey inheritance tax in mind if you plan to leave non-liquid assets to a Class C or Class D beneficiary. In other words, if you want to leave your house to a friend, make sure you figure out how he or she will raise the money (the NJIT is due eight (8) months from date of death) to pay the 11% or 15% New Jersey inheritance tax on the full value of that property.

In the third installment of this series, I will talk about Income Taxation of Retirement Assets, Annuities, and Savings Bonds and the Capital Gain Tax, with an effort to keeping the reader awake long enough to finish the article!

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