

Section 5. Specialized Returns for Individuals

5.1 Estate Tax

1. Gross Estate



Gross Estate

What is an Estate?

Estate definition. Separate taxable entity created upon death of every individual.

a. During administration period, decedent's legal representative is responsible for collecting and conserving all assets, satisfying all claims against the estate, and distributing any remainder to the appointed heirs.

b. Estates also have 3 key parties.

Decedent.

Executor. A decedent's legal representative appointed under the will (or called the administrator if appointed by the probate court because there is no will). Has a fiduciary responsibility to operate the estate.

Beneficiary. One who will receive the assets and/or income from the estate.

c. Termination of estate is somewhat discretionary. May be incentive to use estate as an income-shifting device.

Gross Estate

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 ([Refer to Form 706](#)). 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.

The Gross Estate of the decedent consists of an accounting of everything you own or have certain interests in at the date of death ([Refer to Form 706](#)). 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

Please Refer to the Addendum for this Section

2. Taxable Estate

Estate or trust taxable income is computed similarly to individuals, with some exceptions.

- a. Estates and complex trusts are subject to more generous limitations concerning their deductions for charitable contributions.
- b. No standard deduction.
- c. Unused loss carryovers are allocated to the beneficiaries when the entity terminates.
- d. Estates are not allowed deductions to extent that the items have been claimed as deductions for Federal estate tax purposes.
- e. Allowed deduction for taxable income distributed or required to be distributed to its beneficiaries

Please Refer to the Addendum for this Section

3. Unified Credit

A credit is an amount that reduces or eliminates tax. The applicable credit applies to both the gift tax and the estate tax and it equals the tax on the applicable exclusion amount. The applicable credit must be subtracted from any gift or estate tax owed. Any applicable credit used against gift tax in one year reduces the amount of credit that can be used against gift or estate taxes in a later year.

The credit on the basic exclusion amount is \$ 11.4 Million for 2019 and \$ 11.18 in 2018. The total amount of applicable credit available to a person will equal the tax on the basic exclusion amount plus the tax on any de-ceased spousal unused exclusion (DSUE) amount.

4. Jointly Held Property

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.

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.

5. Life Insurance and Taxable Estate

One of the benefits of owning life insurance is the ability to generate a large sum of money payable to the heirs in the event of death. An even greater advantage is the federal income- tax free benefit that life insurance proceeds receive when they are paid to a beneficiary. However, although the proceeds are income- tax free, they may still be included as part of the taxable estate for estate tax purposes.

6. Marital Deductions and Other Marital Issues

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.

7. IRAs and Retirement Plans

If a person other than the decedent's spouse inherits the decedent's traditional IRA or Roth IRA, that person cannot treat the IRA as one established on his or her behalf. If a distribution from a traditional IRA is from contributions that were deducted or from earnings and gains in the IRA, it is fully taxable income. If there were nondeductible contributions, an allocation between taxable and nontaxable income must be made. For information on distributions from a Roth IRA, see the discussion earlier under *Income in Respect of a Decedent*. The inherited IRA cannot be rolled over into, or receive a rollover from, another IRA. No deduction is allowed for amounts paid into that inherited IRA.

8. Filing Requirements

Every domestic estate with gross income of \$600 or more during a tax year must file a Form 1041. If one or more of the beneficiaries of the domestic estate are nonresident aliens, the personal representative must file Form 1041, even if the gross income of the estate is less than \$600.

A fiduciary for a nonresident alien estate with U.S. source income, including any income that is effectively connected with the conduct of a trade or business in the United States, must file Form 1040NR, U.S. Nonresident Alien In-come Tax Return, as the income tax return of the estate.

A nonresident alien who was a resident of Puerto Rico, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands for the entire tax year will, for this purpose, be treated as a resident alien of the United States.

The estate's representative may request an extension of time to file for up to six months from the due date of the return. However, the correct amount of tax is still due by the due date and interest is accrued on any amounts still owed by the due date that are not paid at that time.