

# An Estate Planning Warning For Married Massachusetts Residents Who Are Not US Citizens

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Married couples in Massachusetts can take advantage of unlimited gifting between spouses. This is an effective and useful strategy that makes planning to minimize estate taxes relatively straightforward in most situations.

What if one spouse is a non-citizen, however? The estate tax rules are different. It is still possible to protect your assets and provide for your spouse, though you just must plan more carefully.

## **The unlimited marital deduction**

The reason there are no estate taxes at the first death when both spouses are US citizens is due to a deduction in the estate tax world known as an *unlimited marital deduction*. So, regardless of the wealth of the couple, there's no estate tax at the first death. All assets are passed to a surviving spouse who is a U.S. citizen, so the unlimited marital deduction just zeroes out that tax.

## **If the spouse is not a U.S. citizen**

However, if a spouse were not a U.S. citizen, there would be a

significant tax. There is no unlimited marital deduction. This is the case because the government's concern is that if the non-citizen spouse inherited all the wealth from their deceased spouse, there is a possibility they may return to their home country where the U.S. government would never be able to levy the estate tax against their estate.

### **There are solutions**

There are solutions to this. It's best to do advanced planning while you and your spouse are alive to ensure that this tax doesn't get levied on the widow(er) who's a non-U.S. citizen. But don't fret, there are options for our clients in which one or both spouses are non-U.S. citizens.

So, seek out proper legal advice from a qualified estate planning attorney to ensure you're not subject to this tax.

*Do you have a suggestion for a future article topic for Attorney Walecka? Reach out to him directly with a question or topic you think would be helpful to readers.*

*The information contained in this article is not intended to make you an expert on estate planning nor is this article intended to replace the need for the advice of a professional. Rather, this article is simply intended to provide a basic understanding of why estate planning is important for everybody and a basic understanding of some of the more common estate planning tools. This article does not constitute legal advice.*