

# Non-Citizen Resident Estate and Gift Planning Guide



If you are not a U.S. Citizen, but currently living in the United States, you may wish to review the existing tax laws that are involved at your death. You may not be aware that based upon the value of your assets, your beneficiaries could be faced with the potential impact of the federal estate tax, as well as state inheritance or estate taxes.

The U.S. estate and gift tax systems are complex and the taxes and penalties for mistakes can be substantial. For a non-US citizen (non-citizen), the tax regulations and limits are even more complex and require special expertise in estate planning.

### Estate Taxes:

For 2015, U.S. Citizens and non-citizen residents can leave up to \$5,430,000 to their beneficiaries and not incur any federal estate taxes. However, for non-resident non-citizens (non-resident aliens), this amount that could avoid tax is limited to only \$60,000.

The assets subject to tax are those with a U.S. situs in excess of the \$60,000. Situs rules can often be complex and confusing. Since tax treaties are involved with many countries around the world, you will need to discuss this with an attorney who specializes in Non-resident estate taxation.

Here is a very simple example of the impact:

#### 2014 ESTATE TAX COMPARISON: CITIZEN VS NON-RESIDENT ALIEN

US CITIZENS		NON-RESIDENT ALIEN	
Estate:	\$ 10,000,000	Estate:	\$ 10,000,000
Less Marital Deduction:	-10,000,000	Less Marital Deduction:	-10,000,000
<b>Taxable Estate:</b>	<b>\$ 0</b>	(Assumes QDOT)	
Survivor's Net Estate:	\$ 10,000,000	<b>Taxable Estate:</b>	<b>\$ 0</b>
Less Applicable Exclusion Amount:	- 5,430,000	Survivor's Net Estate:	\$ 10,000,000
<b>Taxable Estate:</b>	<b>\$ 4,570,000</b>	Less Applicable Exclusion Amount:	- 60,000
<b>Federal Estate Tax:</b>	<b>\$ 1,828,000</b>	<b>Taxable Estate:</b>	<b>\$ 9,940,000</b>
		<b>Federal Estate Tax:</b>	<b>\$ 3,932,800</b>

Usually the first question to answer is whether you would be considered a “resident” or a “non-resident”. If we look at U.S. Treasury Regulations for direction, “domicile” is defined as:

*“A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile nor will intention to change domicile effect such a change unless accompanied by actual removal.”*



To simplify the government’s statement, here are some factors that are reviewed by the IRS to help determine if one has resident or non-resident status:

1. Length of time spent in the US and abroad
2. Size, cost and nature of the decedent’s houses or other residence – whether owned or rented
3. Location of the decedent’s family and close friends
4. Visa status
5. Location of decedent’s business interests and voting records
6. Declaration of residence in one’s wills, trusts or deeds

### **Federal Gift Taxes:**

In addition to limitations placed on estate tax exemptions, restrictions are made to gift tax exclusions as well. Married non-resident aliens do not have the ability make unlimited tax-free gifts to a spouse, nor is the use of combined, split gifts between husband and wife allowed. The maximum lifetime gift amount between spouses is restricted to \$147,000. This will hamper the total amount couples can gift annually.

If estate and gift planning is vital to your financial plans at this time, we recommend you discuss your current situation with an experienced estate planning attorney in your area.



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Des Moines, IA 50309  
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