

THE UNLIMITED MARITAL DEDUCTION

Michael Dalton | Thomas Langdon

CHAPTER 10

Money Education
BY CERIFI

1

THE MARITAL DEDUCTION DEFINED (1 OF 2)

- A married couple is considered one single economic unit.
- Unlimited marital deduction - Under current law, an individual is permitted to leave an unlimited amount of property to their U.S. citizen spouse at their death without incurring any estate tax.
- Advantages of the unlimited marital deduction:
  - Defers payment of estate tax
  - Creates the ability to fund the estate of the second-to-die spouse
  - Ensures the surviving U.S. citizen spouse has sufficient assets to support their lifestyle

© 2026 Money Education

2

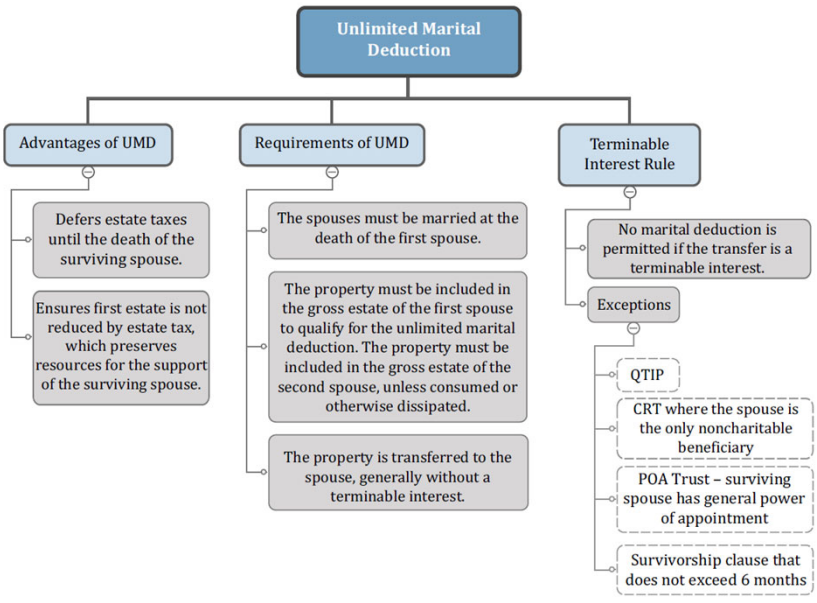
THE MARITAL DEDUCTION DEFINED (2 OF 2)

- Requirements for the unlimited marital deduction:
  - Spouses must be married at date of death or gift
  - U.S. citizen requirement
- Limitations of the unlimited marital deduction:
  - Remember – net value!!!

© 2026 Money Education

3

THE MARITAL DEDUCTION SUMMARY



© 2026 Money Education

4

QUALIFICATION FOR THE MARITAL DEDUCTION

- The asset must be included in the decedent's gross estate to qualify
- The property must be transferred to a surviving spouse
- The terminable interest rule applies
  - The transferred property to the surviving spouse must later be either consumed by the spouse or included in the surviving spouse's gross estate.
  - The surviving spouse's interest cannot terminate at a future date.
    - Exceptions
      - Survivorship clause ≤ 6 months
      - QTIP
      - POA trust
      - CRT

© 2026 Money Education

5

OUTRIGHT BEQUESTS TO THE SPOUSE

- The simplest way to qualify a transfer of property for the unlimited marital deduction
- Surviving spouse has complete control over the property during their lifetime
- May choose to limit a direct transfer of property to a surviving spouse:
  - If surviving spouse is incapable or unwilling to manage the transferred property
  - To provide protection of the transferred property from current or future creditors of the surviving spouse
  - To protect interests of children

© 2026 Money Education

6

GENERAL POWER OF APPOINTMENT TRUSTS (POA)

- A general power of appointment (POA) trust (a.k.a. “A Trust”) is an exception to the terminable interest rule.
  - The surviving spouse has the right to appoint the trust property to themselves, their estate, their creditors, or their estate’s creditors any time during life or at death.
  - Additional requirements:
    - All income to surviving spouse
    - POA exercisable by surviving spouse alone
    - Exclusive right in surviving spouse to appoint trust’s property during surviving spouse’s lifetime

© 2026 Money Education

7

QUALIFIED TERMINABLE INTEREST PROPERTY (QTIP) TRUSTS

- A qualified terminable interest property (QTIP) trust (a.k.a. “C Trust”) allows a decedent to qualify a transfer for the marital deduction at their death yet still control the ultimate disposition of the assets.
- The QTIP’s assets are included in the gross estate of the surviving spouse.

© 2026 Money Education

8

QUALIFYING AS A QTIP TRUST

- The property must qualify for the marital deduction.
- The surviving spouse must be entitled to all trust income for life and the income must be paid to the surviving spouse at least annually.
- The surviving spouse must be able to compel the trustee to sell and replace any non-income-producing assets.
- During the surviving spouse's lifetime no one can appoint property to anyone other than the surviving spouse.
- The executor must file an election on Form 706.

© 2026 Money Education

9

PORTABILITY (1 OF 2)

- Was introduced by Tax Relief, Unemployment Insurance Authorization, and Job Creation Act of 2010 (TRA 2010)
- Made permanent by ATRA 2012
- Deceased spouse's unused exemption (DSUE)

© 2026 Money Education

10

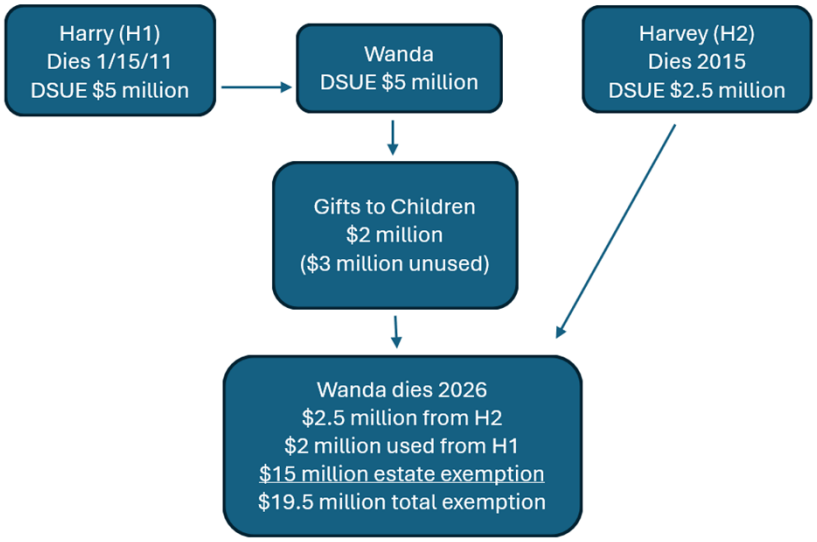
PORTABILITY (2 OF 2)

- The concept of portability does not mean that marital deduction planning is outdated. Nor does it mean that bypass trusts are outdated.
- DSUE is not indexed for inflation. It is a static number determined upon the death of the first spouse to die.
- In the event the surviving spouse remarries, the surviving spouse is only entitled to the exemption from the most recently deceased spouse.
  - No stacking of deceased spouses' unused exemption amounts

© 2026 Money Education

11

PORTABILITY EXAMPLE



© 2026 Money Education

12

PLANNING FOR THE NON-CITIZEN SPOUSE

- The unlimited marital deduction is not available for a non-U.S. citizen spouse.
  - Planning strategies
    - Non-U.S. citizen spouse becomes a U.S. citizen before the due date of the return and maintains residency following the death of the decedent spouse, or
    - Qualified Domestic Trust (QDOT)
      - At least one U.S. trustee
      - Must prohibit distribution unless U.S. trustee has right to withhold taxes
      - The trustee must keep sufficient assets to pay taxes
      - The executor must elect marital deduction
  - There is a super annual exclusion for a non-citizen spouse of **$194,000 for 2026**.

© 2026 Money Education

13

ALTERNATIVES TO QUALIFICATION (1 OF 2)

- Overqualification
- Underqualification
- Bypass Trusts (a.k.a. “credit shelter trust”)
  - Income to spouse for life, HEMS, 5-and-5
- Common Trust Arrangements
  - ABC trust arrangement

© 2026 Money Education

14

ALTERNATIVES TO QUALIFICATION (2 OF 2)

- Disclaimers
  - Help to solve the problem if over- or under-qualified
- Irrevocable Life Insurance Trusts (ILIT)
  - Right to income
  - Right to receive distributions for HEMS
  - Right to demand the greater of $5,000 or 5% of the trust corpus ("5-and-5 power") each year

© 2026 Money Education

15

EXAMPLE

- Mike's assets = $16,880,000 ($15.38 million in assets + $1.5 million life insurance policy)
- Mary's assets = $0
- Assume Mike dies first, then Mary dies
- Scenario 1 – Calculate the estate tax liability for each estate assuming Mike leaves all assets to Mary and portability is not elected.
- Scenario 2 - Calculate the estate tax liability for each estate assuming Mike leaves all assets to Mary, the paid-up life insurance is moved to an ILIT more than 3 years before Mike's death, and portability is not elected.
- Scenario 3 - Calculate the estate tax liability for each estate assuming Mike leaves all assets to Mary, the life insurance is moved to an ILIT more than 3 years before Mike's death, and a bypass trust is utilized at Mike's death.

© 2026 Money Education

16

SCENARIO 1: (NO ILIT OR TRUST) 2026

Assets from Mike's Gross Estate	Mike	Mary
Mike's Gross Estate	$16,880,000	$16,780,000
- Funeral & Admin Expenses	(100,000)	(100,000)
- Debts	(0)	(0)
- Taxes due at death	(0)	(0)
= Adjusted Gross Estate	$16,780,000	$16,680,000
- Marital Deduction	(16,780,000)	(0)
- Charitable Deduction	(0)	(0)
= Taxable Estate	$0	$16,680,000
+ Post ' 76 Gifts	0	0
Tentative Tax Base	$0	$16,680,000
Tentative Estate Tax	$0	$6,617,800
- Applicable Estate Tax Credit	(0)	($5,945,800)
Total Estate Tax Liability	$0	$672,000

© 2026 Money Education

17

SCENARIO 2: (ILIT USED > 3 YEARS) 2026

Gross Estate	Mike	Mary
Assets from Mike's Gross Estate	$15,380,000	$15,280,000
- Funeral & Admin Expenses	(100,000)	(100,000)
- Debts	(0)	(0)
- Taxes due at death	(0)	(0)
= Adjusted Gross Estate	$15,280,000	$15,180,000
- Marital Deduction	(15,280,000)	(0)
- Charitable Deduction	(0)	(0)
= Taxable Estate	$0	$15,180,000
+ Post ' 76 Gifts	0	(0)
Tentative Tax Base	$0	$15,180,000
Tentative Estate Tax	$0	$6,017,800
Applicable Estate Tax Credit	(0)	($5,945,800)
Total Estate Tax Liability	$0	$72,000

© 2026 Money Education

18

SCENARIO 3: (ILIT AND BYPASS TRUST) 2026

Gross Estate	Mike	Mary
Assets from Mike's Gross Estate	$15,380,000	$280,000
- Funeral & Admin Expenses	(100,000)	(100,000)
- Debts	(0)	(0)
- Taxes due at death	(0)	(0)
= Adjusted Gross Estate	$15,280,000	$180,000
- Marital Deduction	(280,000)	(0)
- Charitable Deduction	(0)	(0)
= Taxable Estate	$15,000,000	$180,000
+ Post ' 76 Gifts	0	0
Tentative Tax Base	$15,000,000	$180,000
Tentative Estate Tax	$5,945,800	$48,400
Applicable Estate Tax Credit	($5,945,800)	($48,400)
Total Estate Tax Liability	$0	$0

© 2026 Money Education

19

SUMMARY OF EXAMPLE SCENARIO 1, 2, & 3's TOTAL ESTATE TAX LIABILITY 2026

- Total of Mike & Mary's Assets = $16,880,000
  - ($15.38 million in assets + $1.5 million life insurance policy)
  - Scenario 1: (No ILIT or Trust) = $672,000 estate tax liability
  - Scenario 2: (ILIT only) = $72,000 estate tax liability
  - Scenario 3: (ILIT and Bypass Trust) = $0 estate tax liability

© 2026 Money Education

20