

**SAVING \$325,000 OF NEW YORK STATE ESTATE TAXES (AND POSSIBLY  
FEDERAL ESTATE TAXES) THROUGH THE USE OF NEW YORK STATE ESTATE  
TAX EXEMPTION TRUSTS**

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Does your will leave everything to your spouse if your spouse survives you? When you and your spouse add together the value of all of the items included in your taxable estates, including your house, your investments, your pension plan or IRA balances, and full amount of death benefits payable under your life insurance policies, does the total figure exceed \$4,187,500? If the answer to the two questions posed above is yes, you will be exposing your family to a substantial amount of unnecessary New York State estate taxes which can be avoided by changing your will.

Let us look at the following example involving Mark and Linda, a married couple, who have wills leaving everything to the surviving spouse. Such wills are commonly known as “all to spouse” wills. Assume Mark and Linda own a house worth \$1,400,000, and own investment assets worth \$3,000,000, giving them a taxable estate of \$4,400,000. If Mark, upon his death, left all of his assets to Linda, and Linda subsequently died owning the couple’s house and investment assets, leaving a taxable estate of \$4,400,000, Linda’s estate would have to pay approximately \$325,000 in unnecessary New York State estate taxes.

The reason for Linda’s substantial tax exposure is that the New York State estate tax exemption, the amount which she can leave free of New York State estate tax to her children, is currently limited to only \$4,187,500. Every dollar in excess of such \$4,187,500 amount which Linda leaves to her children is subject to New York State estate tax. Since Linda died with a taxable estate of \$4,400,000, the amount in excess of the \$4,187,500 exemption, which she left to her children, is subject to New York State estate taxes. In addition, since Linda's estate exceeds \$4,187,500, her estate, under the law as currently written, loses the ability to use the New York State estate tax exemption to protect the first \$4,187,500 left to her children from taxes, leaving her estate with a total estate tax liability of approximately \$325,000. In essence, Linda is being subjected to an effective marginal estate tax rate, on the amount exceeding the exemption, of over 100%.

Had Mark and Linda properly planned their \$4,400,000 estate, the \$325,000 of estate taxes which they faced could have been avoided. By changing their “all to spouse” wills, in one of the ways described below, and by dividing their assets equally between themselves, Mark and Linda could have avoided ever having to pay this \$325,000 of New York State estate taxes to the government, thereby passing on an additional \$325,000 to their children.

One method of changing “all to spouse” wills in order to minimize estate taxes, is for Mark and Linda to each leave, upon death, their one-half share of the couple’s assets, directly to their children. This approach, however, is often undesirable from the perspective of the surviving spouse, who usually wants to continue to control all of the couple’s assets, and who may need to receive the income generated by all of the couple’s assets in order to live comfortably.

Fortunately, there is another method of changing “all to spouse” wills which meets the needs of the surviving spouse for control and income while at the same time minimizing the family’s estate tax liability.

The solution involves the use of wills containing “New York State estate tax exemption trusts”. Under such a plan, assets of the first spouse to die are placed in a trust. During the life of the surviving spouse, the surviving spouse can control the investment of the trust assets. All of the income generated by the assets in the trust is ordinarily paid to the surviving spouse. If desired, the surviving spouse can be given the right to pull additional amounts of assets out of the trust. If a house is placed in such trust, the surviving spouse can be given the right to live in such house for the rest of his or her life without interference and without having to pay any rent.

When the surviving spouse ultimately passes away, all of the assets in the “New York State estate tax exemption trust” pass directly to the couple’s children or other beneficiaries without any estate tax being imposed on these assets. The use of wills containing “New York State estate tax exemption trusts”, as opposed to the use of “all to spouse” wills, will likely result in a New York State resident family having \$4,400,000 of combined assets, avoiding approximately \$325,000 of otherwise payable New York State estate taxes.

Recently enacted federal law has raised the federal estate tax exemption to \$5,450,000, resulting in federal estate taxes being less of a concern for most New York State residents than New York State estate taxes. Nonetheless, any household, the members of which have assets which, when added to the face amount of the household's life insurance policies, exceed \$5,450,000, must consider potential federal estate tax liability in their planning in order to avoid losing 50% of such excess in estate taxes.

A will containing a "New York State estate tax exemption trust" can also protect against all of a couple's assets having to be spent down on long term care costs, if specifically drafted for such purpose. Should Mark predecease Linda, leaving his assets in such a specifically structured trust, the assets held in such trust would not have to first be spent on Linda's care in order for Medicaid to pick up the costs of Linda's long term care.

Moreover, using New York State estate tax exemption trusts, instead of leaving all assets directly to a surviving spouse, can provide protection against all of a family's assets being transferred outside of the original family unit as a result of the surviving spouse's cognitive impairment, as a result of an over reaching health care aide, or as the result of undue influence being exerted by a new "friend" who later enters the picture.

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