Safe From the IRS, Not From Albany

New York has its own estate tax — and its own cliff.

Tuesday, September 15, 2026 · 7:00 – 8:00 PM ET

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A Century of the Estate Tax, in One Slide

The federal tax is old and mostly leaves families alone now. New York's is younger — and closer.

Federal

1916	Federal estate tax enacted. Exemption: $50,000.
2001	Exemption $675,000. Congress begins a decade of phase-ups.
2011	$5 million, indexed for inflation. Portability between spouses arrives.
2018	Doubled to $11.18M by the 2017 tax law — but scheduled to sunset in 2026.
2026	Sunset cancelled. $15,000,000 per person, permanent and indexed (2025 law).

New York

2013	Exemption stuck at $1,000,000 for years. Almost every homeowner's estate was taxable.
2014	Reform: exemption phased up toward the old federal level — and the 105% cliff and the three-year gift add-back were born.
2017	Phase-up complete at $5,250,000. Indexed for inflation from 2019 ($5,740,000).
2026	$7,350,000. The cliff now sits at $7,717,500.

The federal exemption has doubled twice since 2010. New York's has roughly tripled — and still sits at about half.

THE NUMBERS, SIDE BY SIDE

Federal vs. New York Exemption, 2020 – 2026

Sources: IRS revenue procedures and P.L. 119-21; NY Department of Taxation and Finance. Cliff = 105% of the NY exclusion.

Year of death	Federal exemption	Married, with portability	New York exclusion	NY cliff (105%)
2020	$11,580,000	$23,160,000	$5,850,000	$6,142,500
2021	$11,700,000	$23,400,000	$5,930,000	$6,226,500
2022	$12,060,000	$24,120,000	$6,110,000	$6,415,500
2023	$12,920,000	$25,840,000	$6,580,000	$6,909,000
2024	$13,610,000	$27,220,000	$6,940,000	$7,287,000
2025	$13,990,000	$27,980,000	$7,160,000	$7,518,000
2026	**$15,000,000**	**$30,000,000**	**$7,350,000**	**$7,717,500**

Same family, same assets: in 2026 New York starts taxing at less than half of where Washington does.

TWO SYSTEMS, ONE ESTATE

Not a Smaller Federal System — a Different One

Same estate, two returns, two sets of rules.

	Federal	New York
Exemption (2026)	$15,000,000	$7,350,000
Portability between spouses	Yes, if elected on a timely return	None
Top rate	40%	16%
Gift tax during life	Yes — same lifetime exemption	None — but gifts within 3 years of death come back
Going slightly over	Taxed on the excess only	The cliff: past 105%, the whole estate is taxed

Clearing the federal bar tells you nothing about whether you owe New York.

AND ACROSS THE RIVER

New Jersey Asks a Different Question

No estate tax since 2018 — but an inheritance tax that turns on who receives, not how much.

Class A — no tax

- Spouse or civil-union partner
- Children, grandchildren
- Parents, grandparents
- Stepchildren

Class C — taxed

- Siblings
- A child's spouse or widow(er)
- First $25,000 passes free
- Rates from 11% to 16%

Class D — taxed most

- Nieces, nephews, cousins
- Friends, unmarried partners
- No exempt amount
- 15% – 16%

New York cares about how much. New Jersey cares about who. If you have a foot in both, you need both answers.

A PRACTICAL EXAMPLE

They Were Told They Had No Tax Problem

A New York couple in their late sixties. Primary residence in Nassau County. Numbers rounded.

What they own

Home in Nassau, no mortgage	**$1.5M**
Retirement accounts	**$2.4M**
Brokerage and cash	**$1.5M**
Rental property in Queens	**$0.9M**
Life insurance on him	**$1.5M**
Total	**$7.8M**

What they were told

- “The exemption is $15 million.”
- “You're nowhere near it.”
- “You don't have an estate tax problem.”
- Every word of that was true — federally.
- Nobody added up the New York column.

And the life insurance is the piece nobody counted.

A PRACTICAL EXAMPLE

So What Happens When He Dies?

1. **The IRS is not the problem.** The federal exemption is $15,000,000 per person. Nothing is owed. The advice was right.

2. **New York runs its own system.** Its own exemption, rates, and rules. In 2026 the New York number is $7,350,000.

3. **They are over by more than 5%.** $7.8M against a cliff of $7,717,500. In New York the exemption doesn't shrink as you go over — it disappears.

4. **New York taxes the whole estate.** Not the excess. The entire $7.8 million, from the first dollar: roughly $746,000.

The policy he bought to protect his family is what pushed them over the line.

TONIGHT

Three Questions for the Hour

One federal, one state, one about what you actually do next.

1. **How does the estate tax work?** What's actually counted, what the exemption really is, and how portability works between spouses.

2. **Why doesn't that answer help here?** New York's separate tax, no portability at the state level, and why credit shelter planning is alive and well.

3. **What is the cliff — and the fixes?** The 105% rule, the three-year add-back, life insurance, and equalizing what each of you owns.

It Is Not “What's in the Will”

The estate tax counts everything you owned or controlled at death — however it passes.

“My will only covers a few things, so my estate is small.” That's the probate estate. It isn't the taxable one.

The house

At full market value. A mortgage-free home in Nassau does a lot of work here.

Retirement accounts

IRAs and 401(k)s count in full, even though they pass by beneficiary form.

Life insurance

If you own the policy, the entire death benefit is in your estate — not the cash value.

Joint property

Counted by contribution — or in full, if you paid for it.

The business

Appraised value, whether or not anyone intends to sell it.

Recent gifts

In New York, taxable gifts made within three years of death are added back.

One Coupon for an Entire Lifetime

Sometimes called the unified credit. It covers gifts you make while alive and whatever is left at death.

$15,000,000

Federal exemption per person, 2026. Made permanent by the 2025 law.

$30,000,000

What a married couple can shelter federally, between the two of them.

40%

The federal rate on anything above the exemption.

Give it away now or leave it at death — it comes out of the same one number.

Portability: The Federal Safety Net

If the first spouse doesn't use their exemption, the survivor can pick it up — federally.

How it works

- First spouse dies without using their $15M
- The unused amount transfers to the survivor
- Survivor can now shelter up to $30M
- It's why many couples leave everything outright

What people get wrong

- It is not automatic — a federal return must be filed
- It has to be filed even when no tax is owed
- It doesn't carry over to the generation-skipping exemption
- And New York has no version of it at all

That last bullet is where tonight turns.

In New York: Use It, or Lose It

Everything to the surviving spouse is tax-free at the first death — and throws away an exemption.

Everything outright to the spouse

- No tax at the first death — the marital deduction covers it
- But the first spouse's New York exemption is simply gone
- Everything piles into one estate
- The survivor has one exemption to cover all of it

A credit shelter trust at the first death

- Set aside up to the New York exemption in a trust
- The survivor can still be supported from it
- But it never becomes theirs to be taxed on
- Two exemptions instead of one

Federal portability rescues the first plan. New York offers no rescue at all.

The Three-Box Picture: A, B and C

How a well-built plan splits at the first death.

A — Marital Trust

General power of appointment

A slice your spouse controls outright — full access, and they decide where it goes. Qualifies for the marital deduction. Optional; many plans skip it.

B — Credit Shelter Trust

Also called the bypass or family trust

Funded with up to the New York exemption. Your spouse can draw on it — but it is never in their estate. This is the box New York won't hand to your survivor.

C — QTIP Trust

Qualified terminable interest property

The rest. All income to your spouse for life, principal locked for your children. Qualifies for the marital deduction only if the election is made.

The B box is the whole point. It is the exemption New York will not hand to your survivor.

The QTIP Election: Federal and New York

The C trust earns the marital deduction only if the executor elects it — on both returns.

Federal — Form 706, Schedule M

- The election is affirmative: list the QTIP trust on Schedule M, line 4 and claim it in the marital deduction — nothing listed, no election
- Irrevocable once made; a partial election is allowed
- Elected property is later taxed in the survivor's estate (IRC §2044)

Reproduced from Schedule M (Form 706) (Aug. 2025), line 4

4 Enter QTIP property interest included in the gross estate that passes from the decedent to the surviving spouse and for which a marital deduction is claimed.

(i) Item no. (ii) Description of QTIP interests passing to surviving spouse (iii) CUSIP / EIN (iv) Amount

New York — Form ET-706 (9/25), page 1

- Since April 1, 2019 the NY election is made directly on the ET-706 — one Yes/No box — and it is irrevocable (TSB-M-19(1)E)
- The QTIP must also appear on Schedule M, line 4 of the federal 706 attached to the NY return — actual or pro forma
- Elected property comes back into the survivor's NY gross estate (ET-706 line 13)

Reproduced from Form ET-706 (9/25), page 1, Tax computation

	Yes	No
a Is a federal estate tax return (either federal Form 706 or Form 706-NA) required to be filed with the IRS?	☐	☐
b Are you making a qualified terminable interest property (QTIP) marital election? If Yes, the QTIP must be listed on Schedule M, line 4 of federal Form 706 you are attaching to this filing.	☒	☐

No election, no marital deduction: the C trust is taxed at the first death. The executor makes it on the estate tax return — so it's due when the return is due.

Whose Name It's In Decides Everything

The credit shelter trust only works if there are assets in that spouse's name to fund it.

If one of you owns almost everything, half the plan is decorative.

What gets in the way

- Joint accounts pass straight to the survivor
- The house titled to one spouse — or to both jointly
- Retirement accounts can't be retitled at all
- Decades of “whatever was easiest at the bank”

What to do about it

- Look at the balance between the two names, not the total
- Retitle so each spouse can fund a credit shelter trust
- Use the revocable trusts as the destination, not the survivor
- Retirement assets are the constraint — plan around them

Five Percent Over, and It All Disappears

Most tax systems tax the excess. New York phases out the exemption, then taxes everything from the first dollar.

Estate of $7,350,000

$0

At the exemption. New York collects nothing.

Estate of $7,400,000

≈ $100,000

Fifty thousand over. The credit phases out fast — about 200% of the excess in tax.

Estate of $7,800,000

≈ $746,000

Past 105%. No exemption at all — the whole estate is taxed.

$450,000 more in assets. $746,000 in tax. That is the cliff.

No Gift Tax. Something Else Instead.

You can give assets away — but the timing is what New York cares about.

Taxable gifts made within three years of death are added back into the New York estate (currently through 2031).

New York

- No gift tax on lifetime transfers
- But gifts inside the three-year window come back
- Which can push an estate over the cliff after the fact
- Deathbed gifting does not solve a cliff problem

Federal

- There is a gift tax, tied to the same lifetime exemption
- Completed gifts are out of the estate
- Only the gift tax actually paid gets pulled back
- Plus life insurance transferred within three years (§2035)

The double hit: New York tax on an added-back gift generally gets no federal deduction — the §2058 state death tax deduction reaches only property in the federal gross estate, and the gift isn't in it.

The Policy You Own Is Money You Own

IRC §2042(2): proceeds are in your estate if you held any "incident of ownership" at death.

A $1.5 million death benefit is $1.5 million in your estate — even though the money doesn't exist until you die.

Incidents of ownership (Reg. §20.2042-1(c)(2))

- Power to change the beneficiary
- Power to surrender or cancel the policy
- Power to assign it, or revoke an assignment
- Power to pledge it for a loan, or borrow against the cash value
- A reversionary interest worth more than 5%

The fix — and the catch

- An irrevocable life insurance trust owns the policy; the benefit is paid outside your estate and can be lent to it for liquidity
- Moving an existing policy starts a three-year clock (§2035). Die inside it and the benefit comes right back
- Where a new policy makes sense, have the trust apply for and own it from day one

Naming a beneficiary changes who gets it — not whose estate it's in.

What Actually Moves the Needle

None of these are exotic. All of them need to be done before they are needed.

1. **Build in the credit shelter trust** So the first spouse's New York exemption is actually used instead of quietly forfeited.
2. **Balance what each of you owns** Retitling costs nothing and is what makes the trust fundable in the first place.
3. **Get life insurance out** A trust owns the policy, so the death benefit isn't sitting in the estate pushing you toward the line.
4. **Gift with runway** More than three years out, so it counts. Small annual gifts compound quietly over a decade.
5. **Add a “Santa Clause”** A charitable bequest of whatever exceeds the New York exemption. If you land in the cliff zone, the charity gets the excess and the family keeps more than it would have after tax — a catch-all so the cliff can't ambush you.

Four Questions to Ask About Your Own Plan

You don't need to know the law to know whether your plan answered these.

1. **Do I know what my estate is actually worth?** Everything, at full value — including the face amount of every policy, and any large gifts in the last three years.
2. **If I died first, how much is in my name?** That number is the ceiling on what a credit shelter trust can hold.
3. **Does my plan use a credit shelter trust?** Or does everything go outright to my spouse and rely on a federal rule New York doesn't have?
4. **Who owns my life insurance?** If the answer is “I do,” it is in the estate.

YOUR NEXT STEP

Three Things to Do This Month

None of them require hiring anyone.

1. **Add it up honestly** House, retirement, brokerage, the business, the second property — and every life insurance policy at its face amount, not its cash value. Use the Cliff Check worksheet.

2. **Check whose name things are in** Not the total. The balance between the two of you — and what's joint. That decides whether a credit shelter trust can be funded.

3. **Search your documents for one phrase** “Credit shelter,” “bypass,” or “family trust.” If none of them appear, your plan is probably built on the federal answer alone.

Get Tonight's Resources

Everything we covered — plus tools to check your own plan.

1. **The New York Cliff Check** A one-page worksheet to total your estate the way New York does — by spouse, joint, insurance and recent gifts.
2. **Estate & Financial Life Organizer** A fillable PDF to capture accounts, documents, and wishes in one place.
3. **Estate Planning Starter Guide** The plain-English overview of wills, trusts, and the core documents.
4. **A free 20-minute intro call** We'll map the gaps in your plan and answer your questions.

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Thank You

Let's continue the conversation.

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