



# FITZWATER L A W

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## Is my estate subject to tax?

Estate tax is assessed upon the death of an individual when the value of the assets owned or controlled by that individual (the “taxable estate”) exceed a specific threshold set by statute. Any assets included in a person’s taxable estate receive a step-up in basis to date-of-death value, thus eliminating any built-in capital gain that existed prior to death.

There are potentially two levels of estate tax that may apply to Oregon residents at death:

1. The Oregon Estate Tax: Every individual residing in Oregon at the time of his/her death has a \$1,000,000 exemption from Oregon estate tax. If an individual dies owning assets in excess of \$1,000,000, an Oregon estate tax return must be filed. The tax rates for the Oregon estate tax start at 10% and gradually increase to 16%. There is a 100% deduction for any assets that are left to: (1) a tax-exempt organization; or (2) a surviving spouse outright (or in a qualifying trust).
2. The Federal Estate Tax: Every U.S. individual has a combined \$11.70 million (2021) (this amount will be adjusted each year for a cost of living increase) exemption from federal estate and gift tax. If an individual dies with a taxable estate in excess of \$11.70 million, a Federal estate tax return (“Form 706”) must be filed. The taxable estate for federal purposes includes the cumulative value of taxable gifts made by the individual during his/her lifetime (see Gift Tax discussion below). The federal estate tax is a rate of 18% up to 40%. Again, there is a 100% deduction for any assets that are left to: (1) a tax-exempt organization; or (2) a surviving spouse outright (or in a qualifying trust). Additionally, under the “portability” rules, the estate of a surviving spouse may use the unused portion of a predeceased spouse’s federal exemption if a proper election is made.

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