



# Estate Taxes for Mexican Nationals Buying U.S. Homes

*Mexican nationals may have to pay taxes on the value of a U.S. home worth over \$60,000 if a non-resident alien, or up to a 35% tax on world-wide assets if a resident alien.*

## **Introduction to “The Death Tax”**

The United States of America places a federal estate tax on the assets of deceased persons. Mexico does not have an estate tax, so this is a unique problem new Mexican homebuyers should understand and consider resolving before making a home purchase in the U.S. (It is important to note that some individual states, like New York, have an estate tax in addition to the federal tax; however, Texas does not).

## **History**

Historically, the tax has been as high as 77% (during the Second World War). It has fluctuated over time, with the rates in the last ten years falling from 55% in 2001 to 35% today for the richest estates. On December 17, 2010, a new federal law was passed making all estates immune from paying any tax whatsoever if they have less than \$5 Million in estate assets. It is estimated that less than 1% of Americans will have to pay the tax.

## **The Problem**

The problem for foreign investors is that this \$5 Million exemption may not be available. Full-time residents of the United States, whether citizens or not, have the same \$5 Million exemption; however, the exemption amount for non-resident aliens is only \$60,000. Without proper planning, most home purchases will subject a non-resident alien to this heavy tax.

## **The Solution**

There is not a single solution for all foreign nationals; each case may have unique issues. However, here is one common example of how non-residents may consider buying their U.S. home:

First, we buy or transfer the home into the name of a Texas limited liability company (LLC) formed for the sole purpose of owning title to the home. Owning this Texas LLC would still subject someone to the estate tax, so we make the sole owner of the LLC a foreign entity, like a corporation, in Mexico. The non-resident alien often already owns



this Mexican corporation. This is not a problem for the estate tax, as there is no tax consequence for a foreigner owning a foreign company.

At the individual's death, because the LLC does not die, transfer of the home's ownership can be accomplished when the ownership of the Mexican entity is transferred in Mexico, and there will likely be no estate tax consequence in the U.S.

### **The Pros and Cons of Residency**

For many reasons, it may be a tough decision whether becoming a non-resident alien, a U.S. resident, or a U.S. citizen is a good idea. Only looking from the prospective of the estate tax, there are some unique issues to consider.

The estate tax for non-resident aliens covers only assets found at death within the boundaries of the United States. However, the estate tax for residents covers any property at death found **anywhere in the world**. Thus some clients that have more than the \$5 Million exemption amount in assets worldwide may wish to remain non-residents to ensure that these assets are exempt from the estate tax.

Of course, having more assets than the \$5 Million exemption is not a unique problem to foreign nationals. Wealthy U.S. citizens also utilize trusts and other tools to minimize or avoid the tax. As such, with proper legal advice you may be able to also structure titled assets to minimize any tax due. Please consult with legal counsel before making such a decision to not become a U.S. resident just to avoid the estate tax.

### **Conclusion**

The death tax (estate tax) should be considered when buying a home in the United States. With proper planning and restructuring of titled assets, like a home, this estate tax can be minimized, and in some cases eliminated entirely. Legal counsel is available to help in this important process and prevent this tax from interfering with your decision to move to or own a second home here in Texas.

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