

## Non-Resident Owned Assets Subject to U.S. Estate Tax

U.S. Non-Resident Aliens who hold certain U.S. assets described as ***U.S.-situated assets***, may be subject to estate taxes on their value over a \$60,000 threshold.

These assets could include:

*Real estate in the U.S. (condominiums, houses, land etc.)*

*Stock in a U.S. corporation, wherever held*

*U.S. Mutual funds*

*Tangible property held in the U.S. (cars, boats, planes, Jewelry, cash and art, etc.)*

### Nonresident Alien Estate Tax

The federal estate tax is a tax on the estate of a decedent, levied against and paid by the estate. The determination of federal estate tax liability involves a series of adjustments and modifications of a tax base known as the “gross estate.”

### The Gross Estate: The Federal Estate Tax on U.S.-Situated Property

The gross estate of nonresident aliens, for U.S. federal estate tax purposes, include ***only*** property “situated” in the United States. Real property and tangible personal property physically located in the country qualify as property “situated” in the United States. Shares of stock issued by a corporation incorporated in the United States, regardless of the physical location of the certificates are also considered as U.S. situated assets.

### “Situated in the United States” for Federal Estate Tax Purposes

Assets in a brokerage account may or may not be considered situated in the United States, depending on their classification. As a rule of thumb, any asset subject to the Non-Resident Alien tax on income, would likely be considered U.S. situated assets and subject to estate tax.

Property	Situated in U.S.?
Real-estate Located in United States	YES
Tangible Personal Property Located in United States	YES
Stock in U.S. Corporation including U.S. mutual funds and ETFs	YES
Stock in Foreign Corporation including foreign mutual funds	NO
Cash or jewelry in U.S. Safe Deposit Box	YES
Cash Deposit in U.S. Bank (checking, savings, CDs, etc.)	NO
Cash Deposit with Foreign Branch of U.S. Bank	NO
Condominium Located in United States	YES
U.S Bonds issued after July 18, 1984	NO
Bonds from Non-U.S. Issuers	NO
Mortgage, Enforceable Against U.S. Resident or Corporation	YES
Rights in Crops, Timber, Water and Minerals	YES

**Exceptions:** Assets that are generally exempt from U.S. estate tax include securities that generate portfolio interest (most bonds), bank accounts not used in connection with a trade or business in the U.S., and non-U.S. domiciled stocks/funds, even if the fund assets would individually be considered U.S. situated. An IRISH



domiciled mutual fund that invests in U.S. S&P 500 stocks would be considered as NOT in the U.S. Direct ownership of a U.S. mutual fund investing in the S&P 500 stocks would be considered U.S. situs property, and subject to estate tax.

## The Tax Rate on Taxable Estates

The taxable estate of a non-resident alien is granted a tax credit of \$13,000. This effectively grants an exemption value of the 1<sup>st</sup> \$60,000 of estate value.

<b>Taxable Estate</b>	<b>Tentative Tax not</b>
over \$10,000	18% of such amount
\$10,000-\$20,000	\$1,800 + 20% of excess over \$10,000
\$20,000-\$40,000	\$3,800 + 22% of excess over \$20,000
\$40,000-\$60,000	\$8,200 + 24% of excess over \$40,000
\$60,000-\$80,000	\$13,000 + 26% of excess over \$60,000
\$80,000-\$100,000	\$18,200 + 28% of excess over \$80,000
\$100,000-\$150,000	\$23,800 + 30% of excess over \$100,000
\$150,000-\$250,000	\$38,800 + 32% of excess over \$150,000
\$250,000-\$500,000	\$70,800 + 34% of excess over \$250,000
\$500,000 - \$750,000	\$155,800 + 37% of excess over \$500,000
\$750,000 - \$1,000,000	\$248,300 + 39% of excess over \$750,000
Over \$1,000,000	\$345,800 + 40% of excess over \$1,000,000

### Example:

Mr. Jones saved his whole life and sold his construction business. He bought a vacation apartment in Coral Gables and has money in a bank and a brokerage account. Mr. Jones passes away suddenly, and his family is trying to transfer the account from his name and sell the apartment. What is their potential estate tax liability, before assets are transferred to his heirs?

<b>Assets</b>	<b>Value</b>	<b>Taxable?</b>	<b>Taxable Value</b>
Apartment (paid \$125,000)	\$250,000	Yes	250,000
Bank Checking Account	50,000	No	0
Car, house furnishings	75,000	yes	75,000

### Broker account:

U.S. stocks and stock mutual funds	200,000	yes	200,000
Non-U.S. mutual funds and stocks	200,000	no	0
U.S. bonds	100,000	no	0
U.S. Bond mutual funds	125,000	yes	125,000
Loan to U.S. friend secured by lien	100,000	yes	100,000

**Possible taxable estate**

**\$750,000**

**Possible tax liability** \$248,300, less the tax credit of \$13,000 leaving a net tax liability of **\$235,300**.





## Conclusion

U.S. Estate tax may be due on estates of non-residents with assets defined as 'U.S.-Situating'. This includes U.S. real estate, stock ownership in U.S. companies (even if those shares are held in safekeeping in an account outside the U.S.), and tangible assets held in the country. Assets that are exempt from U.S. estate tax typically include securities that generate portfolio interest (most bonds), bank accounts not used in connection with a trade or business in the U.S., and non-U.S. domiciled stocks/funds, even if those funds are held in a U.S. account. Tax due on property designated as U.S.-Situating begins at 26% of value for assets between \$60,000-\$80,000, with the rate rising to 40% for asset values above \$1 million. Consult with your tax advisor to ensure that your investments consider any exposure your estate may have to U.S. Estate Tax liability.

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## References:

Some Nonresidents with U.S. Assets must file Estate Tax Returns:

<https://www.irs.gov/individuals/international-taxpayers/some-nonresidents-with-us-assets-must-file-estate-tax-returns>

Homeland Security Digital Library: Estate and Gift Taxes for Non Resident Aliens <https://www.hsdl.org/?abstract&did=755134>

IRS: Taxation of Nonresident Aliens <https://www.irs.gov/Individuals/International-Taxpayers/Taxation-of-Nonresident-Aliens>

Retained Interest rule; US Code Section 2036: <http://codes.lp.findlaw.com/uscode/26/B/11/A/III/2036>

EY: Worldwide Estate and Inheritance Tax Guide 2018:

[https://www.ey.com/Publication/vwLUAssets/ey-worldwide-estate-and-inheritance-tax-guide-2018/\\$FILE/ey-worldwide-estate-and-inheritance-tax-guide-2018.pdf](https://www.ey.com/Publication/vwLUAssets/ey-worldwide-estate-and-inheritance-tax-guide-2018/$FILE/ey-worldwide-estate-and-inheritance-tax-guide-2018.pdf)

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