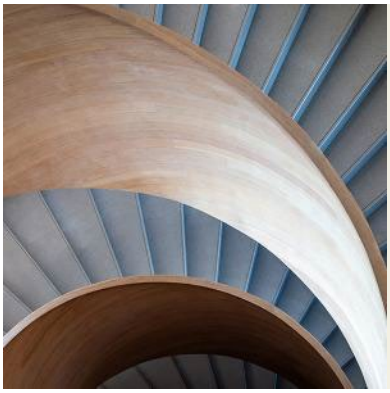
Proskauer



Personal Planning Strategies

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The Personal Planning Strategies newsletter provides articles addressing the latest statutory changes and developments affecting retirement, estate, insurance, and tax planning, as well as cutting-edge corporate, real estate, and tax concepts.

With over a century of combined experience, the lawyers of Proskauer's Private Client Services Department regularly provide their diverse clientele – from business entrepreneurs and corporate executives to sports figures and performing artists – with their Personal Planning Strategies newsletter, a critical source of information which identifies significant issues of interest to Proskauer's clients.

Edited by **Henry J. Leibowitz**
Contributor: Jessica Buchanan

Estate, Gift, and GST Tax Update

What This Means for Your Current Will, Revocable Trust, and Estate Plan

The federal estate and gift tax regimes have been unified since the passage of The American Taxpayer Relief Act of 2012. The Tax Cuts and Jobs Act of 2017 significantly increased the estate, gift and generation-skipping transfer ("GST") tax exemptions. Last year, Congress enacted the One Big Beautiful Bill Act on July 4, 2025, permanently increasing these exemptions levels.

2027 Federal Estate, Gift and GST Tax Exemptions

- Estate Tax: There is a $15,480,000 federal estate tax exemption with a 40% top federal estate tax rate. This is a $480,000 increase from 2026.
- Gift Tax: There is a $15,480,000 lifetime gift tax exemption with a 40% top federal gift tax rate.
- GST Tax: There is a $15,480,000 GST tax exemption with a 40% top federal GST tax rate.
- Annual Gift Tax Exclusion: The annual gift tax exclusion amount is $20,000. This is a $1,000 increase from 2026.

How These Changes Affect Your Estate Planning Documents

Proskauer's estate planning documents are drafted to be flexible and, in general, their overall structure account for the increased exemption amounts. Still, there may be instances where you will want to update your documents.

Key Considerations:

- While the estate tax exemption is portable between spouses at death, the GST tax exemption is not portable.
- Many states that have separate state estate tax regimes (such as Connecticut, Massachusetts, and New York) do not permit portability of their state estate tax exemption amount. Use of estate planning vehicles, such as bypass trusts at the first death of a married couple, may be most useful where these limits on portability are applicable.
- If you are a married couple and live in a state with a state estate tax (or own real property in a state with a state estate tax, such as Connecticut, Massachusetts, or New York), there may be provisions that should be incorporated in your estate planning documents which could save state estate taxes at the death of the first spouse.

Please contact us if you would like your estate planning documents reviewed to confirm they reflect your current wishes and take full advantage of available exemptions.

2027 Gift Tax Annual Exclusion

In 2027, the gift tax annual exclusion amount per donee is $20,000 for gifts made by an individual and $40,000 for gifts made by a married couple who agree to "split" their gifts.

You can still use your 2026 gift tax annual exclusion amount of $19,000 for gifts if "completed" before December 31, 2026.

Consider gifting securities or interests in privately held companies or other family-owned entities. Valuation discounts on these gifts can enhance the transfer's long-term tax efficiency if the assets appreciate in value.

Your annual exclusion gifts may be made directly to your beneficiaries or to trusts that you establish for their benefit. To qualify for the annual exclusion, gifts to trusts must include withdrawal powers, known as "Crummey" withdrawal powers. If you have created a trust that contains beneficiary withdrawal powers, it is essential that your Trustees send Crummey letters to the beneficiaries whenever you (or anyone else) make a trust contribution. For a more detailed explanation of Crummey withdrawal powers, please see Crummey Withdrawal Notices – Recommended Practices at Personal Planning Strategies - Insights - Proskauer Rose LLP.

If you have created an insurance trust, remember that any amounts contributed to the trust to pay insurance premiums are considered additions to the trust. As a result, the Trustees should send Crummey letters to the beneficiaries to notify them of their withdrawal rights over these contributions. Without these letters, transfers to the trust will not qualify for the gift tax annual exclusion.

2026 Gift Tax Returns

Gift tax returns for gifts that you made in 2026 are due on April 15, 2027. You can extend the due date to October 15, 2027, on a timely filed request for an automatic extension of time to file your 2026 income tax return, which also extends the time to file your gift tax return. If you created a trust in 2026, you should instruct your accountant to elect to have your GST tax exemption either allocated or not allocated, as the case may be, to contributions to that trust. This is a critical step which must be taken even if your gifts do not exceed the annual gift tax exclusion and would, therefore, not otherwise require the filing of a gift tax return. You should call one of our attorneys if you have any questions about your GST tax exemption allocation.

New York Basic Exclusion Amount to Increase in 2027

As of January 1, 2027, New York's exclusion amount is projected to increase to approximately $7,600,000 (New York has not yet released its adjusted estate tax exemption for 2027).

New York's 2014 reform significantly increased the state's basic exclusion amount from its prior level of $1 million per individual. This increase was gradually made through January 1, 2019, after which the New York basic exclusion amount corresponded to the federal exemption amount under The American Taxpayer Relief Act of 2012 (a $5 million exemption base),

without adopting the Tax Cuts and Jobs Act of 2017. As a result, the New York State estate tax exclusion amount is approximately equal to half of the federal estate tax exemption.

New York adds a punitive mechanism for larger estates. New York applies a "cliff" that eliminates the exclusion amount entirely for estates exceeding 105% of the New York exclusion amount. In other words, New York estate tax will be imposed on the entire estate if the estate exceeds the New York exclusion amount. Due to adjustments to the bracket structure in the new law, those estates that are valued at more than 105% of the New York basic exclusion amount will pay the same tax as they would have under the prior law.

For example, assume a person dies as a New York domiciliary on May 1, 2027, with an estate valued at $8 million and when the New York basic exclusion amount will be approximately $7.6 million. Because the value of the estate exceeds 105% of the then-available New York basic exclusion amount ($7.6 million x 105% = $7,980,000), the estate will be subject to New York estate tax on the entire $8 million. The New York State estate tax liability will be $773,200, which is the same as the amount that would have been due under the old law. In contrast, if an individual had died with an estate valued at $7.5 million, her estate would owe no New York estate tax under the new law because the New York basic exclusion amount will be applied to her estate.

While New York has no gift tax, gifts in excess of annual exclusion gifts made within three years of an individual's death are included in the gross estate and subject to New York estate tax. The gift add back does not include gifts made three years prior to date of death or gifts made during a time when the decedent was not a resident of New York State. Since New York does not have a gift tax, it is usually more beneficial for New York residents to gift assets during their lifetimes in order to potentially avoid New York estate tax attributable to those assets at their deaths.

The increase in New York's exclusion amount enhances opportunities to use bypass trusts to shelter the New York basic exclusion amount. The proper disposition of the basic exclusion amount is the cornerstone of estate planning for married couples. Significant tax savings can be achieved if the basic exclusion amount is set aside at the death of the first spouse, thereby "bypassing" estate taxation at the death to the surviving spouse. In addition, any appreciation of assets that occurs in the trust also escapes estate taxation at the death of the surviving spouse. As New York's basic exclusion amount rises, the potential tax benefits from employing bypass trusts increase as well.

If you wish to discuss any aspect of the new law as it relates to your estate planning, please contact one of the lawyers in the Private Client Services Department at Proskauer.

NYC "Pied-à-Terre" Tax – Final Rules & Other Updates

Background and Surcharge Framework

The New York City pied-à-terre surcharge took effect on July 1, 2026, and applies annually through June 30, 2031, to certain high-value residential properties that are not used as primary residences.

For fiscal years 2026–2027 and 2027–2028, the surcharge generally applies to one-, two-, and three-family homes ("Class 1 homes") valued by the New York City Department of Finance ("DOF") at $5 million or more and condominium and co-op units valued at $1 million or more.[1] Rates range from 0.8% to 1.3% for Class 1 homes and from 4% to 6.5% for condominium and co-op units.[2]

The surcharge does not apply if the property qualifies as a "primary residence" under the statute. Primary-residence status is tested annually as of January 5 immediately preceding the applicable fiscal year, and subsequent changes in ownership or occupancy generally do not affect that year's determination. Accordingly, looking forward, planning for the

[1] For fiscal years 2026-2027 and 2027-2028, DOF uses NYC's existing property-tax valuation system to determine which properties are subject to the surcharge. The value of Class 1 homes is determined by using a comparable sales valuation methodology. The value of co-ops and condominiums is generally derived from the hypothetical income the property would generate if it were operated as a rental property.

[2] Beginning July 1, 2028, condominium and co-op units move to the same $5 million threshold and 0.8%–1.3% rate schedule applicable to Class 1 homes, while their market value will be determined under the Phase Two valuation methodology, which uses comparable sales.

2027–2028 fiscal year generally must be implemented by January 5, 2027.

Initial Implementation

On July 14, 2026, DOF's final rules implementing the surcharge became effective. Under the final rules, DOF first identifies properties that may be subject to the pied-à-terre tax and then determines whether each property qualifies for the primary-residence exemption. DOF released its initial list of potentially covered properties on July 24, 2026, which included more than 31,000 properties, and began notifying property owners of their potential liability.

DOF is required to send individualized notices to the owners of the properties included on the list. The notices include the projected surcharge amount, the deadline, and instructions for submitting a primary-residence exemption request challenging DOF's determination. However, they do not explain the factual basis for DOF's determination that the property is not a primary residence. As a result, owners generally must prepare an appeal without knowing why DOF concluded that the property did not qualify as a primary residence.[3]

Qualifying for the Primary-Residence Exemption

Property owners can receive an exemption from paying the surcharge after establishing that their property is a qualifying primary residence. A property will qualify as such if it is the primary residence of a "covered owner," an immediate family member of a covered owner, or a qualifying lessee or sublessee. A "covered owner" is an individual who owns a Class 1 home, a tenant-stockholder who owns the co-op shares associated with a co-op unit, or an individual who owns a condominium unit. An "immediate family member" of a covered owner is strictly limited to the covered owner's spouse, child, sibling, parent, grandparent, or grandchild.

Individual-Owned and Entity-Owned Property

An individual may qualify as a "covered owner" even if that person owns only a fractional interest in the property, as long as he or she owns a direct interest in the property. However, where property is owned through an entity, the entity's owners may qualify as covered owners only if the entity itself owns the entire undivided interest in the property (or, for a co-op, all of the shares attributable to the unit). The individuals residing in the property must, alone or collectively, hold a majority interest in the entity. The final rules permit multiple resident shareholders, members, or partners to aggregate their ownership interests to satisfy this requirement. Therefore, no single resident needs to own a majority interest in the entity, provided that the resident owners collectively own more than 50%.

However, an individual cannot establish covered-owner status through a multi-tier entity structure. For example, if an individual owns 100% of LLC 1, which in turn owns 100% of LLC 2, and LLC 2 owns the residence, the individual cannot qualify as a covered owner merely by virtue of the individual's ownership of LLC 1.

Trust-Owned Property

Special rules apply to trust-owned residences. An individual residing in property owned by a trust can qualify as a covered owner only if the resident beneficiary or beneficiaries are the "sole beneficiaries" of the trust. In making that determination, contingent and future beneficial interests are disregarded, so the existence of remainder beneficiaries or other persons holding only future or contingent interests does not necessarily prevent the current beneficiaries from qualifying. Multiple current beneficiaries can qualify collectively, provided they are the sole beneficiaries for this purpose.

For example, if Husband and Wife reside in a trust-owned apartment and are current beneficiaries, but their Child is also a current beneficiary, Husband and Wife would not qualify because they are not the trust's sole beneficiaries.

The trust rules are stricter than those applicable to individual or entity ownership because an immediate family member of a trust beneficiary cannot establish primary residence on the beneficiary's behalf. In other words, for trust-owned property, the primary-residence requirement cannot be satisfied just because an immediate family member of a qualifying trust beneficiary resides at the property. Instead, the resident family member must independently qualify under the trust rules. For example, if a trust owns an apartment for the benefit of Parent

[3] For FY 2026-2027, DOF used income tax data to make initial determinations of primary residency.

but Child resides there, Child's occupancy cannot be attributed to Parent for purposes of the exemption.

Leased Property

A property leased or subleased to an individual can qualify if that person uses it as a primary residence and the lease or sublease is an "arm's length transaction." An entity such as an LLC cannot establish primary residency as a tenant. The arm's-length requirement also prevents an owner from creating a pretextual or nominal rental arrangement principally to escape the surcharge. Facts and circumstances indicating a reasonable possibility that the lease was entered into primarily to avoid the surcharge prevent it from qualifying as an arm's length transaction.

Death and Temporary Absences

The final rules provide temporary protection when a person who otherwise satisfies the primary-residence requirements dies, is hospitalized, or temporarily resides in a rehabilitation facility or nursing home. In those circumstances, the individual's primary-residence status is deemed to continue for one year immediately following the relevant event, rather than being lost immediately because the person is no longer physically occupying the property.

Exemption and Appeal Requests

The rules provide that an owner who receives notice of DOF's initial surcharge determination but believes that DOF has incorrectly characterized his or her property as a non-primary residence must submit an exemption request directly to DOF within 30 days after the notice is sent (or, if no notice is sent, within 30 days after the surcharge appears on DOF's published "assessment roll" list). The exemption request is submitted as a written appeal through DOF's electronic portal. The deadline to submit an exemption for fiscal year 2026-2027 has passed.

If DOF denied the appeal, the denial constitutes a final agency determination. The owner may then seek further review before the New York City Tax Commission pursuant to Administrative Code § 11-3206, rather than pursuing another appeal within DOF. Alternatively, where the owner is also challenging the property's market value, the owner may elect to challenge DOF's initial primary-residence determination before the Tax Commission in the first instance. The rules prohibit an owner from pursuing parallel primary-residence challenges before both DOF and the Tax Commission. The deadline to file an appeal is March 1, 2027, for condominiums and co-ops and March 15, 2027, for Class 1 homes.

Penalties

DOF may audit a property's surcharge liability, including whether the property properly qualified as a primary residence and whether the supporting certifications and documentation were accurate, within six years after those materials were submitted. In conducting an audit, DOF may request information and documentation necessary for its review and may "subpoena and require the attendance of witnesses and the production of books, papers and documents."

An audit may result in penalties if DOF determines that "inaccurate or misleading information" material to the surcharge determination was submitted "negligently or in bad faith."

Where the inaccurate or misleading information, if accepted by DOF, would cause the surcharge not to be imposed at all, the penalty is "50% of the surcharge applicable to such property for such fiscal year." Where inaccurate or misleading information results in a lower valuation and reduced surcharge, the penalty is 300% of the amount by which the surcharge was understated, capped at 50% of the surcharge otherwise applicable to the property. In either instance, DOF will still impose the underlying surcharge.

If a penalty is challenged, DOF bears the burden of establishing the relevant facts by a preponderance of the evidence. The owner may seek administrative review of the penalty, and the Commissioner's ultimate determination constitutes a final agency determination.

Due to these penalties, the exemption process should not be viewed as a risk-free opportunity to apply and see what happens. An owner who knows the property does not qualify should be cautious about certifying otherwise, because a knowingly inaccurate certification could support a finding of bad faith and trigger the penalty provisions.

Planning Opportunities and Takeaways

Practitioners should review the ownership and occupancy of potentially covered residences well before the January 5, 2027, testing date for the 2027–2028 fiscal year. Potential planning opportunities include modifying or severing a trust so that the residents of a trust-owned property are its only current beneficiaries, simplifying multi-tier or multi-owner entity structures so that resident owners can qualify as covered owners, or entering into a bona fide, arm's-length lease with a tenant who will use the property as a primary residence.

The surcharge should also be considered in domicile planning for clients who have left or are considering leaving New York City but intend to retain a residence there, as the cost of the surcharge may affect the overall tax benefits of changing domicile.

The Private Client Services Department at Proskauer is one of the largest private wealth management teams in the country and works with high-net-worth individuals and families to design customized estate and wealth transfer plans, and with individuals and institutions to assist in the administration of trusts and estates.

If you have any questions regarding the matters discussed in this newsletter, please contact any of the lawyers listed below:

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