Personal Planning Strategies

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New York Significantly Changes its Estate Tax – No Decrease in Estate Tax for the Wealthy

The New York State legislature has passed, and New York Governor Andrew M. Cuomo has signed, the Executive Budget for 2014-2015, which significantly alters New York's estate tax. The changes to the New York estate tax were made for the ostensible purpose of preventing the exodus of wealthy individuals from New York to more tax-favored jurisdictions, but the law will likely not have the desired effect. Although the law increases the amount that may pass at death free of New York estate tax (the "New York basic exclusion amount"), it also entirely eliminates the use of the New York basic exclusion amount by wealthy individuals. This will ultimately result in heavy New York estate tax being levied on estates valued at more than the amount that may pass free of federal estate tax (currently $5.34 million per person, as indexed for inflation) (the "federal exemption amount"). However, there are estate tax savings for estates below the federal exemption amount.

The new law increases the New York basic exclusion amount, which was previously $1 million per person. As shown on the next page, this increase will be made gradually through January 1, 2019, after which the New York basic exclusion amount will be equal to the federal exemption amount.

Time Period	New York Basic Exclusion Amount From Estate Tax
April 1, 2014 to April 1, 2015	$ 2,062,500
April 1, 2015 to April 1, 2016	$ 3,125,000

April 1, 2016 to April 1, 2017	$ 4,187,500
April 1, 2017 to January 1, 2019	$ 5,250,000
After January 1, 2019	Same as federal exemption amount (currently $5,340,000 but increases each year for inflation)

Perhaps the most significant change in the law, however, is that no New York basic exclusion amount will be available for estates valued at more than 105% of the New York basic exclusion amount. In other words, New York estate tax will be imposed on the entire estate. However, 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 on May 1, 2014 with an estate valued at $2.17 million. The New York basic exclusion amount will be $2,062,500. Because the value of the estate exceeds 105% of the then available New York basic exclusion amount ($2,062,500 x 105% = $2,165,625), the estate will be subject to New York estate tax on the entire $2.17 million. The New York State estate tax bill will be $112,400, 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 $2 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. Under the old law, however, the decedent's estate would still have owed $99,600 in New York estate tax.

Another significant change in the law involves certain gifts made during a decedent's lifetime. New York has no gift tax. Under prior law, lifetime gifts were not subject to gift tax or included in the New York gross estate. Under the new law, gifts made within three years of a decedent's death will be added back, increasing the New York gross estate, and thus potentially being subject to New York estate tax at a maximum rate of 16%. However, the add back does not include gifts made before April 1, 2014, on or after January 1, 2019 or gifts made during a time when the decedent was not a resident of New York State.

If you wish to discuss any aspect of the new law as it relates to your estate planning, please contact one of the attorneys in the Personal Planning Department at Proskauer Rose LLP.

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