Proskauer

Personal Planning Strategies

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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. Most recently, Congress enacted the One Big Beautiful Bill Act on July 4, 2025, permanently increasing these exemptions levels.

2026 Federal Estate, Gift and GST Tax Exemptions

- Estate Tax: There is a $15,000,000 federal estate tax exemption with a 40% top federal estate tax rate. This is a $1,010,000 increase from 2025.
- Gift Tax: There is a $15,000,000 lifetime gift tax exemption with a 40% top federal gift tax rate.
- GST Tax: There is a $15,000,000 GST tax exemption with a 40% top federal GST tax rate.
- Annual Gift Tax Exclusion: The annual gift tax exclusion amount remains $19,000.

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.

2026 Gift Tax Annual Exclusion

In 2026, the gift tax annual exclusion amount per donee remains $19,000 for gifts made by an individual and $38,000 for gifts made by a married couple who agree to “split” their gifts.

You can still use your 2025 gift tax annual exclusion amount of $19,000 for gifts if “completed” before December 31, 2025.

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.

2025 Gift Tax Returns

Gift tax returns for gifts that you made in 2025 are due on April 15, 2026. You can extend the due date to October 15, 2026 on a timely filed request for an automatic extension of time to file your 2025 income tax return, which also extends the time to file your gift tax return. If you created a trust in 2025, 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 2026

As of January 1, 2026, New York's exclusion amount is $7,350,000.

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.

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, 2026, with an estate valued at $7.75 million and when the New York basic exclusion amount will be $7.35 million. Because the value of the estate exceeds 105% of the then available New York basic exclusion amount ($7.35 million x 105% = $7,717,500), the estate will be subject to New York estate tax on the entire $7.75 million. The New York State estate tax liability will be $739,000, which is the same as the amount that would have been due under the old law.

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.

The New York LLC Transparency Act — What Business Owners Need to Know

Overview

Starting in 2026, most limited liability companies (LLCs) formed or doing business in New York will have to disclose their "beneficial owners"—the individuals who ultimately own or control the company. The law is known as the New York LLC Transparency Act (the "New York Act") and is modeled after a similar federal law, the Corporate Transparency Act.

Who Must Report

In general, unless an exemption applies (and subject to the caveat noted below under "Interaction with Federal Law"), the following entities are subject to reporting requirements under the New York Act:

- LLCs formed in New York
- LLCs registered to do business in New York

Key Dates

- January 1, 2026: The law takes effect but there are problems that must be addressed through new legislation that has not been signed into law yet by the governor (see Interactions with Federal law below).
- Existing LLCs (formed before 2026): must report by December 31, 2026.
- New LLCs (formed on or after January 1, 2026): must file within 30 days of formation or registration.

What Information Must Be Reported

Each reporting LLC must provide information about its beneficial owners and company applicants, including:

1. Full legal name
2. Date of birth
3. Current home or business street address
4. A unique ID number (from a valid passport, driver's license, or other government-issued ID)

These details will be filed with the New York Department of State and updated annually. The New York Act was previously amended to ensure that these details will not be available to the public; rather, they will be stored in a secure database that may be accessed only by authorized government and law enforcement personnel.

Interaction with Federal Law

The New York Act originally borrowed definitions (like "beneficial owner" and "reporting company") from the federal Corporate Transparency Act. However, recent federal rule changes have complicated this approach—potentially exempting any LLC formed in the United States from the New York Act's reporting requirements, contrary to the law's intended scope.

To fix this, new legislation (S.B. 8432 / A. 8662-A) aims to define these terms under New York law, independent of federal definitions. This bill has passed the New York legislature but hasn't yet been signed into law. Its fate—and the exact reporting rules—will likely be decided in early 2026.

Exemptions

The New York Act recognizes the same 23 exemptions found in the federal law (for example, for large operating companies or certain regulated entities). These exemption are summarized in FinCEN's *Small Entity Compliance Guide* for beneficial ownership reporting requirements, available here. However, even exempt LLCs must file a statement each year confirming their exempt status.

Penalties

LLCs that fail to file on time may face:

- A "past due" or "suspended" status, which blocks them from doing business in New York.
- Fines up to $500 per day for missing deadlines.
- Continued non-compliance for over two years can result in dissolution or loss of registration.

Importantly, no criminal penalties apply under the New York Act.

Bottom Line

The New York LLC Transparency Act will require many LLCs to take on new annual filing obligations and disclose their owners' information to the state. While there's still some uncertainty about final definitions, LLC owners should start preparing now to gather the necessary information and ensure timely compliance once the law takes effect.

Related Professionals

- **Albert W. Gortz**
- **Dara B. Howard**
  Associate
- **Rachel J. Harris**
  Partner
- **Nathaniel W. Birdsall**
  Partner
- **Stephanie E. Heilborn**
  Partner

- **Christiana Lazo**
  Partner
- **Henry J. Leibowitz**
  Partner
- **Jay D. Waxenberg**
  Partner
- **Jacob E. Wonn**
  Associate