
BOND INFORMATION MEMO

Trust and Estate Law

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New York Enacts Significant Changes To Estate Tax Laws

The last year was filled with speculation in the New York estate planning community that the 2014 State budget bill would result in significant changes to New York's long standing estate and gift tax laws. The Governor commissioned a bipartisan study on State taxes and a report was issued at the end of 2013 presenting a number of recommended changes. Many practitioners debated how the recommendations would actually appear in final legislation. Negotiations between the Governor and the State Legislature concluded and, on March 31, 2014, the New York State Senate and Assembly successfully passed a \$140 Billion budget that included the most significant estate tax changes for the State since the estate tax exemption was increased to \$1,000,000 in 2002. The new law is effective as of April 1, 2014.

Estate Tax

The most notable change is the increase of the estate tax basic exclusion amount. The exclusion had been \$1,000,000 per person since 2002. Effective April 1, 2014, the new law immediately increases the exclusion to \$2,062,500 per person. The exclusion then increases each April 1st in the years 2015 through 2018. On January 1, 2019, the basic exclusion amount will be indexed for inflation annually and will be equal to the federal exclusion amount.

The exclusion and the timeframe for each increase is as follows:

- From April 1, 2014 through March 31, 2015 - \$2,062,500
- From April 1, 2015 through March 31, 2016 - \$3,125,000
- From April 1, 2016 through March 31, 2017 - \$4,187,500
- From April 1, 2017 through December 31, 2018 - \$5,250,000
- From January 1, 2019 forward – Indexed for inflation

There was speculation that the estate tax rates might be reduced with this legislation as versions of the original bill included reduced rates. The rates, however, were not changed in the final legislation so the maximum rate remains at 16%. Under federal estate tax laws, the New York State estate tax is deductible and, accordingly, the maximum rate after the deduction is effectively 9.6% for estates subject to federal estate tax.

Cliff Concerns

Of particular concern is the new "cliff" language contained in the law which drastically phases in the estate tax for taxable estates that are between 100% and 105% of the exclusion amount. The effect of the cliff on taxable estates that fall within that range is to impose a substantial tax on the value of the assets in excess of the



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exclusion amount. Once an estate exceeds the basic exclusion amount by more than 5%, not just the amount in excess of the basic exclusion amount is taxed, but, rather, the entire taxable estate is subject to estate tax. In essence, taxable estates greater than 105% of the basic exclusion amount receive no benefit from the exclusion amounts shown above and will pay the same tax that they currently pay.

Temporary Gift Add-Back

New York State repealed its gift tax effective January 1, 2000. The new legislation, however, essentially implements a tax on taxable gifts (i.e., gifts that exceed the annual exclusion amount which is currently \$14,000 per recipient per year) if they are made under certain circumstances. The statutory language does not directly impose a tax on gifts, per se, but, rather, adjusts an individual's gross estate by "adding-back" taxable gifts to an individual's gross estate when calculating the New York estate tax, thus, potentially resulting in a larger estate tax.

In order for gifts to be added to the gross estate, the following requirements must be met: 1) the gifts must have been made within three years of an individual's death, 2) the donor must have been a resident of New York State at the time of the gift, and 3) the gifts must have been made on or after April 1, 2014 and before January 1, 2019.

Therefore, taxable gifts made outside of the three-year "look-back" period prior to an individual's death, by individuals when they were not residents of New York, or outside the dates above will not be added back to an individual's estate. Because the gifts subject to the add-back provisions will be reported on federal gift tax returns, no separate New York gift tax return requirement was enacted.

New York State QTIP Elections

The legislation also permits a separate state Qualified Terminable Interest Property ("QTIP") election to be made in circumstances in which a Federal Estate Tax return is not required to be filed. The legislation does not allow a separate state QTIP election in circumstances in which no federal estate tax return is required to be filed, but a return is filed anyway (most commonly occurring in order to make a portability election or to start the running of the statute of limitations for assets which are difficult to value).

No Portability

Under federal estate tax law, the surviving spouse of a married couple can use any unused exemption of a deceased spouse. For some married couples, portability of the deceased spouse's exemption simplifies planning. The new law as enacted does not contain equivalent provisions for New Yorkers. Accordingly, traditional estate tax planning using trusts will be necessary for New Yorkers who are married and have assets in excess of the new exclusion amounts.

If you have any questions, please contact any of the members of our Trust and Estate Department listed below.

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