

New York State Significantly Changes Estate and Gift Tax Laws

April 14, 2014

On March 31, 2014, Governor Cuomo signed legislation that makes broad changes to the New York State estate and gift tax laws, as well as some more technical changes to certain trust income tax rules. The following is a brief summary of the most important changes affecting New York trusts and estates.

Increase in New York Estate Tax Exclusion Amount

Under the new law, beginning immediately and over the next five years, the New York estate tax exclusion amount (i.e., the amount an individual can pass free of New York estate tax, which was formerly \$1 million) is increased incrementally until the New York exclusion matches the federal estate tax exemption, as follows:

- For individuals dying on or after April 1, 2014 and before April 1, 2015, the exclusion amount will be \$2,062,500.
- For individuals dying on or after April 1, 2015 and before April 1, 2016, the exclusion amount will be \$3,125,000.
- For individuals dying on or after April 1, 2016 and before April 1, 2017, the exclusion amount will be \$4,187,500.
- For individuals dying on or after April 1, 2017 and before January 1, 2019, the exclusion amount will be \$5,250,000.

The top New York estate tax rate remains 16 percent. The New York exclusion amount will be indexed for inflation beginning in 2019.

Falling off the Estate Tax “Cliff”

The benefit of New York’s new exclusion amount is “phased out” for taxable estates between 100 percent and 105 percent of the New York exclusion amount. As a result of the law’s tax “cliff,” if a New Yorker’s taxable estate exceeds the value of the basic New York exclusion amount by 5 percent or more, the entire taxable estate will be subject to New York estate tax (applied at graduated rates). For example, a taxable estate of \$5,250,000 will not be subject to a New York estate tax in 2019; however, a slightly larger estate of \$5,512,500 (which is 105 percent of the applicable exclusion amount) would pay New York estate tax in excess of \$430,000 – a highly unfavorable result that effectively taxes the additional \$262,500 in the larger estate at a marginal rate of over 160 percent.

Inclusion of Lifetime Gifts in New York Estate Tax Calculation

The new law also adds a limited 3-year “look back” period for gifts made between April 1, 2014 and January 1, 2019. That is, the value of gifts made by a New York decedent (i) within three years of death, and (ii) between April 1, 2014 and January 1, 2019 will be added to the value of the decedent’s estate and may result in an estate tax on such gifts.

Repeal of New York Generation-Skipping Transfer Tax

The New York generation-skipping transfer tax has been repealed, meaning that New York will not impose a generation-skipping transfer tax on outright gifts to persons who are two or more generations below the transferor, or on distributions from certain trusts that are held solely for the benefit of said persons.

Income Taxation on Distributions to New York Beneficiaries from Certain Trusts

New York will continue its exception from current income for certain trusts created by New York residents that have (i) no New York trustees, (ii) no property located in New York and (iii) no New York source income. However, New York now imposes an income tax on the accumulated income of such trusts earned after January 1, 2014 at the time of a distribution to a New York beneficiary. In addition, such trusts must file an informational return in any year that there is a distribution to a New York beneficiary.

Income Taxation of Incomplete Gift Non-Grantor (“ING”) Trusts

The new law now imposes New York income tax on New York grantors of certain out-of-state trusts—commonly known as Irrevocable Non-Grantor Trusts or “ING Trusts”—which had previously not been subject to New York income tax. Any such trust will now be treated as a “grantor trust” for purposes of the New York income tax, meaning that the creator will be required to report all of the trust’s income tax items on the creator’s individual income tax returns and will be responsible for the associated income tax liability.

* * * *

To summarize, the new law will narrow, and eventually eliminate, the gap between the New York and federal estate tax exclusion amounts. For the next five years, however, as the exclusion amount increases and the 3-year look back for taxable gifts applies, estate planning will be more complex. Therefore, we encourage you to contact us to discuss how these changes may affect your estate plan and whether any action is necessary or desirable.