

New York State Implements Major Changes to Its Estate and Gift Taxes

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On April 1, 2014, New York Gov. Andrew M. Cuomo signed into law the Executive Budget for 2014-2015, which includes significant changes to the state's estate and gift tax regimes, as well as changes to the income taxation of certain trusts.

Estate Tax

Under prior law, the maximum amount that could be passed free of New York state estate tax was \$1 million per decedent. The new law increases that amount to \$2.0625 million for decedents dying on or after April 1, 2014. As set forth in the table below, this amount will increase further each year until January 1, 2019, when it will equal the combined exemption from federal estate and gift taxes (currently, \$5.34 million per person, indexed for inflation).

Date of Death	Amount Passing Free of New York Estate Tax
April 1, 2014 – March 31, 2015	\$2,062,500
April 1, 2015 – March 31, 2016	\$3,125,000
April 1, 2016 – March 31, 2017	\$4,187,500
April 1, 2017 – March 31, 2019	\$5,250,000
On or after January 1, 2019	Same as the federal exemption amount

Accordingly, for decedents dying in 2014 with a gross estate valued between \$1 million and \$2.0625 million, the new law results in estate tax savings. However, for larger estates, no exemption may be available. Above the \$2.0625 million threshold, the exclusion amount begins to phase out immediately, and is phased out entirely for estates valued at over 105 percent of that amount. The top rate remains at 16 percent but, because of changes to the bracket structure under the new law, estates valued at more than 105 percent of the exclusion amount ultimately will owe the same tax as under prior law.

Additionally, the new law now subjects certain gifts to state taxation. Under prior law, New York had no separate state gift tax, and the new law does not impose such a tax. However, the new law adds back into a decedent's New York gross estate taxable gifts made within three years of death, if they were made on or after April 1, 2014, and before January 1, 2019, and while the decedent was a New York resident.

The bottom line is that while there is some modest decrease in estate tax for those estates that do not exceed the basic exclusion amount, there is no tax decrease for the wealthiest New Yorkers and, in some cases, there may be an increase in the New York estate tax.

Generation-Skipping Transfer Tax

The new law repeals the New York generation-skipping transfer (“GST”) tax, which was previously imposed on any transfer made from a trust holding New York property to an individual more than one generation below the grantor (whether outright or in further trust), if such transfer occurred as a result of the death of an individual. The GST tax was also imposed where, as a result of the death of an individual, all of the beneficiaries of a continuing trust were more than one generation below the grantor. While the New York GST tax has been repealed, such cases remain subject to the federal GST tax.

Income Taxation of Certain Resident Trusts

The new law imposes a “throwback” tax on the beneficiaries of trusts created by New York residents if these trusts are treated as nonresident trusts because they have no New York trustees, New York situs assets or New York source income. Under the prior law, distributions of previously accumulated income from such trusts to beneficiaries resident in New York were not subject to state or city income tax. However, under the new law, a New York beneficiary of such a trust will be taxed not only on current income distributions, but also on previously undistributed net income that was accumulated on or after January 1, 2014, and while such beneficiary was a New York resident.

Incomplete Gift Trusts

The new law causes taxpayers who transferred property to an incomplete gift, nongrantor trust to be treated as grantors for New York income tax purposes. Under the prior law, such property was arguably not subject to state income taxation. However, the New York transferor will now be taxed individually on such trust’s income.

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We encourage you to contact the attorneys listed here or your regular Skadden contact with any questions as to how these changes may affect your estate planning.