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Dramatic Changes to New York State Estate and Gift Tax Laws

New York State's 2014-2015 budget bill, signed into law on April 1, 2014, includes the most significant changes to the state's estate and gift tax regime in more than a decade. Under the new law, the estate tax threshold gradually increases from \$1 million to \$5 million (indexed for inflation), so that it matches the federal estate tax exemption by January 1, 2019. However, the law introduces an estate tax "cliff" (estates exceeding the exclusion amount by more than 5% are taxed back to the first dollar), effectively eliminating the benefit of any New York State estate tax exemption for larger estates. Thus, the impact of the law on taxpayers will vary greatly depending on the size of a taxpayer's estate. Those with taxable

estates of more than \$1 million (the pre-April 1, 2014 threshold) but less than the new exclusion amount will benefit from the new law. However, for those wealthier New Yorkers with taxable estates exceeding the New York exclusion by 5% or more, the estate tax bill will be at least as high as (if not higher than) it was before the changes were enacted.

For Decedents Dying	NY Exemption
April 1, 2014 to March 31, 2015	\$2,062,500
April 1, 2015 to March 31, 2016	\$3,125,000
April 1, 2016 to March 31, 2017	\$4,187,500
April 1, 2017 to December 31, 2018	\$5,250,000
January 1, 2019 and Thereafter	Same as Federal

The Good News

Exemption Increases to Federal Level by January 1, 2019 The new law increases New York's estate tax exclusion amount gradually from its current level of \$1 million (where it has remained since 2000) to \$2,062,500 effective April 1, 2014, \$3,125,000 effective April 1, 2015, \$4,187,500 effective April 1, 2016, \$5,250,000 effective April 1, 2017, and, finally, to \$5 million indexed to inflation with a cost-of-living adjustment pegged from 2010 (i.e. to federal exemption levels) by January 1, 2019. On January 1, 2019 the exemption is projected to be \$5.9 million.

New York GST Tax Eliminated The new law also eliminates New York's generation skipping tax, which is the additional tax imposed on bequests or gifts to beneficiaries who are a "skip generation" younger than the donor (e.g. grandchildren, great nieces and nephews, and non-relatives 37 ½ years younger).

The Bad News

Estate Tax "Cliff" The new law introduces an estate tax "cliff" concept. This means that the New York State exclusion will be phased out for those with New York taxable estates over the exclusion threshold. Estates that exceed the exemption amount by 5% will be taxed back to the first dollar (i.e. no exemption). This is a harsher result than under the prior law. For example, a decedent dying between April 1, 2014 and April 1, 2015 with a New York taxable estate in excess of \$2,165,625 (which is 105% of the New York exclusion amount) will be taxed on the entire amount of the taxable estate, with no exclusion taken

into consideration. Thus, an estate of \$2,165,625 will pay a tax of \$112,050, while an estate of \$2,062,500 will pay no estate tax.

Top Rate Remains at 16% Furthermore, although the initial commission study upon which the changes in law are based had recommended lowering New York's top estate tax rate to 10% from 16%, the legislature chose not to adopt this change. The highest rate remains at 16%.

Gift Tax "Add Back" In addition, the new law calls for the gifts made within three years of death to be added back to the taxable estate for purposes of calculating estate tax due. The purpose of this provision is to prevent taxpayers from reducing their estates by making gifts from the deathbed. However, these add-back provisions are currently limited to gifts made between April 1, 2014 and January 1, 2019 while the taxpayer was a resident of New York State.

No Portability The new law fails to adopt one of the most significant provisions of the federal estate tax law, namely portability. Portability allows a surviving spouse to use the unused federal gift and estate tax exemption of his or her deceased spouse. This provision allows married couples to take advantage of both spouses' exemptions without significant tax planning. Because New York failed to adopt portability, spouses will still need to use estate planning techniques (such as credit shelter trusts and separating spousal assets) to ensure that both of their New York State exemptions can be used.

What You Should Do Now

Given the dramatic changes in both federal and New York State estate and gift tax laws over the past few years, we would strongly suggest that you contact us to review your estate plans and find out how these changes will affect you. It is important to make sure that you are taking full advantage of the increased federal and New York State exemptions and avoiding pitfalls created by the current discrepancy between federal and NYS exemption amounts.

Contact Us

We welcome the opportunity to answer your questions.

<p>Gary S. Moriwaki, Partner 212.237.1068, gmoriwaki@windelsmarx.com</p>	<p>Caryn Young, Partner 212.237.1163, cyoung@windelsmarx.com</p>
<p>Reiko Takikawa, Partner 212.237.1073, rtakikawa@windelsmarx.com</p>	<p>Donald R. Young, Counsel 212.237.1133, dyoung@windelsmarx.com</p>

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