



Significant Changes to New York Estate Tax?

As part of his 2014-2015 budget, Governor Cuomo has proposed making significant changes to the New York State estate tax. It is important to emphasize that the proposal is just that, a proposal. It is, of course, possible that the proposal will not be enacted or, if it is enacted, it will be amended. In short, stay tuned!

The proposal does not change the basic structure of the New York State estate tax. In a nutshell, the New York State estate tax continues to follow the federal estate tax to determine what is subject to tax, how assets are valued and what deductions are available (with a possible exception that will be discussed below).

Proposed Changes

The first significant change is the increase in the amount exempt from New York tax. Over the course of four years, beginning April 1, 2014, the amount exempt from New York State estate tax increases from \$2,062,500 to \$5,250,000 (for decedents dying between April 1, 2017 to December 31, 2019). After December 31, 2019, the New York exemption is to be indexed for inflation.

The second significant change is that the New York State estate tax will take into account adjusted taxable gifts made by a donor after April 1, 2014 if he or she was a New York resident at the time of the gift. "Adjusted taxable gifts" are gifts that do not qualify for the "annual exclusion" (\$14,000 per donee in 2014) or the exclusion for certain gifts to pay tuition or medical expenses.

The third significant change is a reduction in New York State estate tax rates. Eventually, that is, for decedents dying after March 31, 2017, the top rate will be 10% on estates in excess of \$3.6 million. The current top rate is 16%.

The fourth significant change is the introduction of a "New York-only" Qualified Terminable Interest Marital Deduction. Obviously, that is a mouthful, and some explanation is in order. The federal estate tax provides a deduction for certain transfers to a decedent's surviving spouse. The deduction



PROFESSIONAL OPINION

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is unlimited. Outright transfers qualify for the deduction; transfers to certain trusts that benefit the surviving spouse also qualify for the deduction. One of the qualifying trusts is a "qualified terminable interest property trust" or "QTIP trust" for short.

The New York provision, if enacted, would allow for a QTIP deduction for New York purposes where no federal estate tax return is filed. The provision effectively removes any question about the status of a QTIP election where the QTIP election was not needed at the federal level to avoid federal tax.

A fifth significant change is likely to prove controversial with respect to non-residents. In addition to taxing real property and tangible personal property that is located in New York for estate tax purposes, the provision would tax intangible personal property (e.g., a bank account) as though it were also located in New York if the property is used in a "trade, business or profession "carried on" in New York.

Exceptions

As previously mentioned, some estates will not have the benefit of the increased New York exemption. Which estates? In a word, larger estates. The New York exemption is effectively a filing threshold and a credit. Where the taxable estate exceeds 105% of the exemption, however, "no credit shall be allowed to the estate."

Even with the loss of the credit, the amount of New York tax is less than under current law. For example, assume a \$10 million taxable estate. Under current law, the New York tax is \$1,067,600; under the proposed revisions, the tax would be \$878,800, a reduction of nearly 18%.

Under the proposal New York estate tax deductions track federal estate tax deductions

with one likely exception. In keeping with the current New York State estate tax regime, in which the New York estate tax is not a deduction against the New York estate tax, it is likely that the non-deductibility of New York tax against the New York tax will continue.

Some Planning Implications

The eventual elimination of the New York State estate tax for estates under \$5 million (the figure does not reflect indexing) will be welcome for many estates.

Where the New York estate tax will apply, planning will not necessarily be simple under the proposal. First, without portability of the New York exemption, the question of whether to use the New York exemption at the first death of a married couple will still be present.

Second, for an individual near the federal exclusion, the combination of the "all or nothing" feature of the New York credit and the inclusion of adjusted taxable gifts in the New York gross estate may make planning to reduce an estate below the exemption difficult.

Third, the difference between the amount exempt from New York tax and the amount exempt from federal tax likely will complicate planning, particularly in drafting wills or living trusts.

On a near term basis, some will want to consider whether to make taxable gifts before April 1, 2014. Although there are many factors to be considered in making significant gifts, New York has provided a relatively limited time within which to do so.

One of the stated goals was to "address an incentive for wealthy New Yorkers to leave the State." It is uncertain whether the changes will cause any person who might otherwise move out of New York owing to the tax structure to reconsider his or her decision. ■

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