

Major Changes to New York's Estate and Gift Tax Law - Client Newsletter

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Effective April 1, 2014, the 2014-2015 "Executive Budget" makes significant changes to New York's estate tax and gift tax. These changes will have a major effect on estate planning for New York residents. While these changes provide some tax relief for the moderately wealthy, wealthier New Yorkers will see little, if any, change, except under certain circumstances that will cause an increase in estate tax.

The Executive Budget increases New York's basic exclusion amount (\$1 million per decedent prior to April 1, 2014) to \$2.0625 million per decedent as of April 1, 2014, with gradual increases annually until January 1, 2019 when the basic exclusion amount will reach \$5.25 million. Thereafter, it will be indexed for inflation, which should link New York's basic exclusion amount to the federal amount (presently \$5.34 million, but also indexed for inflation). The basic exclusion amount is increased as follows:

Death on or After:	and Before:	Basic Exclusion Amount:
April 1, 2014	April 1, 2015	\$2,062,500
April 1, 2015	April 1, 2016	\$3,125,000
April 1, 2016	April 1, 2017	\$4,187,500
April 1, 2017	January 1, 2019	\$5,250,000

Because of a quirk in the way New York calculates its estate tax, the basic exclusion amount is rapidly phased out once the value of a decedent's taxable estate exceeds the basic exclusion amount in the year of death, and is totally phased out when the value of a decedent's taxable estate is greater than 105% of the basic exclusion amount.

The Executive Budget implements the exclusion by allowing a credit of the "Applicable Credit Amount" to be taken against the tax imposed by the statute, as follows:

If the New York taxable estate is less than or equal to the basic exclusion amount, the Applicable Credit Amount will be the amount of the tax so computed and, therefore, serves as a wash.

If the New York taxable estate is up to 5% greater than the basic exclusion amount, the Applicable Credit Amount will be limited based on a formula, resulting in a rapidly increasing tax for each percent over the basic exclusion amount.

If the New York taxable estate is greater than 105% of the basic exclusion amount, no credit is allowed.

The Executive Budget keeps the top bracket at 16%. Nevertheless, there has been a change in bracket structure. As a result, estates valued in excess of 105% of the basic exclusion amount will have the same tax they would have had under the old law.

The rates included in the Executive Budget only cover the period for a decedent dying on or after April 1, 2014 and before April 1, 2015. While this might have been an error that will require a technical correction, there is some question as to whether it is a time-limited compromise, test period or mandate reached during the budget negotiations.

New York has not had a gift tax since 2000 when New York's gift tax was repealed. Consequently, a commonly used estate planning technique to reduce the size of a New York resident's estate tax was to make gifts within the allowable federal exemption. Not only was the donor able to make a completed gift without incurring gift tax liability in New York, but so long as she had not retained an interest in the gifted property, she was assured that the value of the gift would not come back into her estate for estate tax purposes. The Executive Budget provides that taxable gifts made within three (3) years of death (if not otherwise includible in the federal gross estate) must be added back to a decedent's New York estate for estate tax purposes. The "addback" does not apply to gifts made (i) when the decedent was not a resident of New York, (ii) before April 1, 2014, and (iii) after December 31, 2018. In general, "taxable gifts" do not include annual exclusion gifts (currently \$14,000 per donee) and payments made directly for tuition and medical expenses. The addback, however, does not appear to exclude gifts of real or tangible personal property outside of New York State, which, if owned at a decedent's death, would not be subject to New York's estate tax.

The Executive Budget has repealed New York's generation-skipping transfer ("GST") tax, applicable to taxable distributions to "skip persons" and taxable terminations where "skip persons" receive a trust distribution on its termination.

New York residents may need to modify their estate plan and estate plan documents to reflect these changes to the New York State estate and gift tax law. Pashman Stein tax attorneys are prepared to advise you and assist you in how best to incorporate these changes into your estate plan.