



Estate Planning Update

May 5, 2014

OF INTEREST TO NEW YORK RESIDENTS: NEW YORK ESTATE TAX AND TRUST LEGISLATION ENACTED

In our February Estate Planning Update, we alerted you to Governor Andrew M. Cuomo's budget bill, which proposed major changes to the New York State tax system, including the New York State estate tax and taxation of New York trust beneficiaries. On April 1, 2014, the budget bill containing many of the Governor's proposals was enacted into law (the "New Law"), effective immediately.

The New Law:

- Keeps the top New York estate tax rate at 16%. We can expect additional New York estate tax legislation next year to adjust or confirm the rate table for decedents dying after March 31, 2015.
- Increases the New York State estate tax exclusion amount (the amount that can pass tax-free at death, the "Basic Exclusion Amount") from \$1,000,000 to match the Federal exclusion amount (in 2014, \$5.34 million, and subject to inflation adjustments) over the next five years (as illustrated in the table at the end of this update).
 - However, New York taxable estates exceeding 105% of the Basic Exclusion Amount do not get the benefit of the Basic Exclusion Amount, so that the entire taxable estate (not just the amount exceeding the Basic Exclusion Amount) will be subject to New York State estate tax.
 - The effect of this estate tax "cliff" is that the New Law does not provide any New York state estate tax benefit for very wealthy New York residents, who are essentially in the same position as they were under the prior law.
 - New York taxable estates valued between 100% and 105% of the Basic Exclusion Amount receive a reduced exclusion.
 - Nonetheless, with planning, married couples can obtain the benefit of the increased New York estate tax exclusion amount in the estate of the first-to-die spouse. While many of our married clients already have such planning in place, please contact us if you would like to discuss your individual situation.
- Taxes gifts made by New York residents between April 1, 2014 and January 1, 2019 by including such gifts in the calculation of New York estate tax if the donor dies within three years of making the gift.

- This is a significant change from prior law as lifetime gifts were not subject to New York tax, however, the scope of this gift add-back has been narrowed from the Governor's initial proposal, detailed in our February Estate Planning Update.
- The add-back does not apply to:
 - Gifts of New York resident decedents dying on or after January 1, 2022.
 - Gifts made when the decedent was not a resident of New York State.
 - Non-taxable gifts such as those qualifying for the gift tax annual exclusion (currently \$14,000, or \$28,000 for spouses who elect to split gifts) and certain gifts of tuition and medical expenses.
- Eliminates the New York generation-skipping transfer tax.
- For some trusts, accumulated or undistributed income, which was previously outside the scope of New York tax, will now be taxed upon distribution to a New York resident beneficiary.
 - The new tax is imposed on distributions to New York resident beneficiaries of New York "exempt resident trusts" (trusts established by New York residents that are otherwise exempt from New York income taxation because they have no New York trustees, assets, or source income).
 - The New Law does not impose tax on distributions of income accumulated before January 1, 2014 that would not have been taxable under prior law, or income accumulated before the beneficiary became resident in New York.
 - This rule does not apply to grantor trusts.
 - This rule does not apply to non-grantor trusts that are already subject to New York tax on all income.
- Taxes incomplete gift non-grantor trusts (sometimes known as "DING" or "ING" trusts) as grantor trusts for New York state and New York City purposes, even if they are non-grantor trusts for Federal income tax purposes. The New Law means DING and ING trusts funded by New York residents will be subject to New York tax.

The following table illustrates the New Law's gradual increase in the Basic Exclusion Amount (for those estates that are not phased out of the Basic Exclusion Amount by their size).

Date of Death	NY Basic Exclusion Amount	NY Basic Exclusion Amount Completely Phased Out for Taxable Estates Over:
April 1, 2014 – March 31, 2015	\$2,062,500	\$2,165,625
April 1, 2015 – March 31, 2016	\$3,125,000	\$3,281,250
April 1, 2016 – March 31, 2017	\$4,187,500	\$4,396,875
April 1, 2017 – December 31, 2018	\$5,250,000	\$5,512,500
January 1, 2019 – Going forward	Matches Federal Exclusion Amount (in 2014, \$5.34 million, and adjusted annually for inflation)	Federal Exclusion Amount plus 5%

* * *

For more information, please contact one of the following members of the Firm's Personal Planning Department.

[Laura M. Twomey](#)
(212) 455-3120
ltwomey@stblaw.com

[Neera Rellan Stacy](#)
(212) 455-2761
nstacy@stblaw.com

[Alison G. Silverman](#)
(212) 455-3611
asilverman@stblaw.com

This memorandum is for general information purposes and should not be regarded as legal advice. Please contact your relationship partner if we can be of assistance regarding these important developments. The names and office locations of all of our partners, as well as our recent memoranda, can be obtained from our website, www.simpsonthacher.com.

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this memorandum was not intended or written to be used, and cannot be used, for the purpose of avoiding tax-related penalties under federal, state or local tax law. Each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

The contents of this publication are for informational purposes only. Neither this publication nor the lawyers who authored it are rendering legal or other professional advice or opinions on specific facts or matters, nor does the distribution of this publication to any person constitute the establishment of an attorney-client relationship. Simpson Thacher & Bartlett LLP assumes no liability in connection with the use of this publication.

UNITED STATES

New York

425 Lexington Avenue
New York, NY 10017
+1-212-455-2000

Houston

2 Houston Center
909 Fannin Street
Houston, TX 77010
+1-713-821-5650

Los Angeles

1999 Avenue of the Stars
Los Angeles, CA 90067
+1-310-407-7500

Palo Alto

2475 Hanover Street
Palo Alto, CA 94304
+1-650-251-5000

Washington, D.C.

1155 F Street, N.W.
Washington, D.C. 20004
+1-202-636-5500

EUROPE

London

CityPoint
One Ropemaker Street
London EC2Y 9HU
England
+44-(0)20-7275-6500

ASIA

Beijing

3919 China World Tower
1 Jian Guo Men Wai Avenue
Beijing 100004
China
+86-10-5965-2999

Hong Kong

ICBC Tower
3 Garden Road, Central
Hong Kong
+852-2514-7600

Seoul

West Tower, Mirae Asset Center 1
26 Eulji-ro 5-gil, Jung-gu
Seoul 100-210
Korea
+82-2-6030-3800

Tokyo

Ark Hills Sengokuyama Mori Tower
9-10, Roppongi 1-Chome
Minato-Ku, Tokyo 106-0032
Japan
+81-3-5562-6200

SOUTH AMERICA

São Paulo

Av. Presidente Juscelino Kubitschek, 1455
São Paulo, SP 04543-011
Brazil
+55-11-3546-1000