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Robert D. Borteck, P.C.
Attorneys At Law

70 South Orange Avenue
Suite 207

Livingston, NJ 07039

Telephone: (973) 994-2050

Facsimile: (973) 994-2051

www.bortecklaw.com

ESTATE PLANNING UPDATE:

**Changes to the New York Estate
and Generation-Skipping Tax Laws**

Effective April 1, 2014, New York has adopted significant changes to its estate and generation-skipping tax laws.

Exemption Amount

For nearly a decade the New York estate tax exemption has been \$1,000,000. Under the new law, the exemption will rise steadily over four years, pursuant to the following schedule:

For decedent's dying on or after:	But before:	The exclusion amount will be:
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

Then, as of January 1, 2019, the exemption will be recalculated every year based upon inflation, using \$5,000,000 as a base and 2010 as a reference point. In other words, beginning in 2019, the New York exemption amount will match the federal exemption.

The New York Tax "Cliff"

One of the most important ways in which the New York exemption is now different from the federal exemption is that while the federal exemption is available to every estate, regardless of size, the New York exemption is eliminated from estates exceeding 105% of the full exemption amount. This creates a tax "cliff."

As an example, for a New York resident dying this year (2014) with an estate valued at or under \$2,062,500, no New York estate tax will be paid. However, for a New York resident dying with an estate valued at or over \$2,165,625, the entire estate will be subject to tax, not just the value in excess of the exemption amount (as is the case with the federal estate tax) but every single dollar in the estate! The estate of that “wealthier” decedent will pay a New York estate tax of over \$112,050, a tax of over 108% of the value of the estate over the exemption.

Thus, while the changes to the law were intended to ease the tax bill for wealthy New Yorkers and prevent them from fleeing to lower-tax states, the actual result is that some estates will be charged with much higher-than-expected rates.

Lifetime Gifting

The tax implication of lifetime gifting by New York residents has also been affected by the new law; however, some of the effects are somewhat temporary. Under the new law, a decedent’s New York gross estate will be increased by any taxable gifts (using the federal tax concept) made during the decedent’s last three years of life while the decedent was a New York resident.¹ This “look back” provision is not unique; many states, including New Jersey, have such a provision. The good news is that this “look back” provision will only apply to gifts made in the April 1, 2014 to December 31, 2018 time period. Thus, estates for decedent’s dying on or after January 1, 2022 will be spared from this requirement.

The most controversial change with respect to lifetime gifts is that property in another state gifted during the “look back” period will be included in the calculation of the decedent’s estate regardless of where the property is situated. So, whereas property in another state, *e.g.* a home in Florida, would not be included in New York’s calculation for state estate tax, if that same property is gifted during the 3-year “look back” period, under the new law it will be added to the estate and taxed even though it is located in another state. This provision is *very* controversial and many commentators believe it is unconstitutional; however, until it is challenged in the Courts, it is the current state of the law.

¹ Gifts made while the decedent was a resident of another state are not included.

Portability

One aspect of the New York tax law that remained unchanged by the new law is the lack of portability. Unlike the federal exemption, the New York exemption will not be “portable.” Any unused portion of a decedent’s New York estate tax exemption will be lost rather than aggregated with the surviving spouse’s exemption.

Generation-Skipping Transfer Tax (GST Tax)

One of the few positive outcomes of the change in the law is that the New York GST Tax has been repealed in its entirety. Thus, New York residents may now make gifts to grandchildren, great-grandchildren or other “skip persons” without incurring a state-level GST tax. Of course, the federal GST tax remains in effect and planning with respect to same is always advised.

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Please contact us if you wish to conduct a review of your estate plan to determine whether your plan is affected by any of these changes to the law. In addition, in light of these changes, you may wish to consider implementing other wealth transfer mechanisms, such as Grantor Retained Annuity Trusts (GRATs) or Qualified Personal Resident Trusts (QPRTs), and/or create and fund an Irrevocable Life Insurance Trust (ILIT) where funds can be set aside, outside your estate, and used to pay any tax burden that may be incurred. Of course, we would be pleased to meet with you to review all of these options.

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