



NEW YORK  
(212) 903-8700

WASHINGTON D.C.  
(202) 293-3400

April 28, 2014

ESTATE & GIFT TAX PLANNING NEWSLETTER

***New York State Estate and Gift Tax -- April 2014 Update***

**By: Quincy Cotton, Stuart J. Gross and Mark David Rozen**

The New York State Executive Budget legislation, effective for the fiscal year beginning April 1, 2014, adopts several of Governor Cuomo's proposed changes, with a few alterations.

The New York estate tax exemption is increased over a five-year period to conform to the Federal exemption:

<u>In the case of decedents dying on or after:</u>	<u>The New York basic exclusion amount is:</u>
April 1, 2014 and before April 1, 2015	\$ 2,062,500
April 1, 2015 and before April 1, 2016	\$3,125,000
April 1, 2016 and before April 1, 2017	\$4,187,500
April 1, 2017 and before January 1, 2019	\$5,250,000
January 1, 2019	Same as Federal exemption amount (currently \$5,340,000 but increases each year for inflation)

The top New York estate tax rate remains at 16% and continues to apply to New York taxable estates in excess of \$10,100,000.

The increased exemption can be misleading. An estate becomes subject to New York State estate tax very quickly if it exceeds the basic exclusion amount. If the New York taxable estate exceeds the basic exclusion amount by more than 5%, the entire New York taxable estate is subject to estate tax and the estate loses the benefit of the entire exemption (a phase-out occurs for New York taxable estates that fall in-between). For example, if a New York decedent has a taxable estate of \$5,251,000 at a time when the basic exclusion amount is \$5,000,000, the New York estate tax

would be \$420,920 (168% of the excess over \$5,000,000!). Note that if this decedent had made a charitable bequest of \$251,000, there would be more assets for the heirs after tax than without the charitable bequest. Suffice it to say that estate planning for New York taxpayers is now more complicated than ever.

The new law also does not conform to Federal portability to the surviving spouse of a deceased spouse's unused exemption amount, which simplifies estate planning where the combined assets of the spouses do not exceed their combined exemption amount.

The new law includes a version of Governor Cuomo's proposal regarding the add-back of certain lifetime gifts. Federal estate tax law requires lifetime gifts that were sheltered by the donor's gift tax exclusion amount (currently \$5,340,000) to be "added back" for estate tax purposes. This bumps the estate into a higher rate bracket -- in effect the rate that would have applied if the decedent had not made the lifetime gifts. New York estate tax law did not previously have an add-back rule, but now includes an add-back for gifts made in the three years before death. The gifts to be included are limited, however, to those made while the decedent was a New York resident, and only on or after April 1, 2014 and before January 1, 2019.

Changes to the taxation of income earned by exempt New York trusts were also enacted by the new law. If a New York beneficiary receives a distribution from a trust created by a New York resident, which distribution is comprised of income accumulated by the trust in one or more earlier years when the trust was not subject to New York income tax, that

distribution will be taxable to the beneficiary (subject to credit for taxes paid by the trust to another state). The amount subject to tax is determined by reference to a complicated set of Federal income tax rules for "accumulation distributions," which apply (for Federal income tax purposes) to foreign trusts.<sup>1</sup> There are exceptions for income earned by the trust in a taxable year prior to when the beneficiary first became a New York resident, and for income earned in any taxable year starting before January 1, 2014.

In the case of New York State residents who transferred property to an incomplete gift non-grantor trust (sometimes called "NINGS"), the income of such a trust (less any deductions of the trust) is to be included in the current income of the grantor for New York State income tax purposes, regardless of when the trust was created or funded. However, this change does not apply to income earned by trusts that are liquidated on or before June 1, 2014.

***Our Estate Tax Planning Practice Team***

Stuart J. Gross	(212) 903-8723
Mark David Rozen	(212) 903-8743
Quincy Cotton	(212) 903-8739
Lionel Etra	(212) 903-8721
Debra G. Kosakoff	(212) 903-8735
Jessica. G. Weinberg	(212) 903-8750
Sanford H. Goldberg	(212) 903-8745

---

<sup>1</sup> The New York provision does not impose the penalty-like interest charge that applies under Federal tax law to accumulation distributions from foreign trusts.