

ACTION NEEDED BY MARCH 31, 2014 TO AVOID PROPOSED CHANGES TO NEW YORK ESTATE TAXES AND TRUST INCOME TAXES

By *Barbara E. Little*

If Governor Cuomo's proposals are enacted, New Yorkers and non-residents with property located in New York may be facing new taxes this April Fools' Day.

New York Estate Tax

First, the good news — under the proposal:

1. Over the course of the next four years, the New York estate tax exemption would increase from \$1 million to \$5.25 million (indexed for inflation thereafter).
2. The top New York estate tax rate would decrease from 16 percent to 10 percent for decedents dying after March 31, 2017.
3. The New York generation-skipping transfer tax (GST) would be repealed allowing for multi-generational tax savings.

The below chart provides an overview of this good news:

For Decedent Dying	New York Exemption	Maximum Tax Rate*
April 1, 2014 – March 31, 2015	\$2,062,500	14.5 %
April 1, 2015 – March 31, 2016	\$3,125,000	13 %
April 1, 2016 – March 31, 2017	\$4,187,500	11.5 %
April 1, 2017 – December 31, 2019 (and thereafter)	\$5,250,000 (indexed for inflation)	10 %

* The lower incremental bracket rates remain the same.

This is where the good news ends. Currently, New York does not have a gift tax and the estate tax calculation does not "clawback" gifts. If the proposal passes, there still will not be a New York gift tax; however, the New York estate

tax will take into account adjusted taxable gifts (gifts in excess of the annual gift exclusion) made after April 1, 2014. If you want to discuss lifetime gifting, please contact us NOW so that we can explore with you proceeding with the gifts before March 31, 2014.

Non-resident decedents may also be negatively impacted if the proposal is enacted. Currently, the estate of a non-resident decedent is taxed only on real property and tangible personal property located in New York. Under the proposal, the estate of a non-resident decedent would also be taxed on intangible personal property used in a trade, business or profession conducted in New York if such property were gifted prior to death. For example, if you live in New Jersey and gift to your children an interest in a business you are actively engaged in and such business is in New York, the gifted business interest would be taxed by New York upon your death. However, if you owned such business interest at your death, it would not be taxed in your New York estate. Non-resident decedents contemplating gifting such business interests are encouraged to contact us to weigh the impact on New York estate taxes as opposed to death taxes (estate and/or inheritance) imposed by the decedent's home state.

New York Trust Income Taxes

Under current law, a New York resident trust (a trust whose Grantor was domiciled in New York at the time the trust became irrevocable) is not subject to New York income tax if the following conditions are met:

1. All trustees are domiciled outside New York.
2. All real and tangible trust property is located outside New York.
3. All trust income and gain is derived from sources outside New York.

In addition, the accumulated income of a non-resident trust (a trust whose Grantor was not domiciled in New York at

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the time the trust became irrevocable) is not subject to New York income tax.

Under the proposal, distributions of accumulated ordinary income made on or after June 1, 2014 from a non-taxable resident or non-resident trust to a New York beneficiary would be subject to New York income tax. The proposal exempts distributions of income accumulated prior to tax year 2011; therefore, the tax would only be on income accumulated as of January 1, 2012. Residents of New York City would also incur the New York City tax.

Individuals with incomplete gift, non-grantor trusts (DINGs/NINGs) will also be affected by the proposal. These trusts would be deemed grantor trusts for New York purposes. Accordingly, the income (including capital gain) of these trusts would be taxed to the Grantor.

In light of this proposal, Trustees should consider whether to make distributions of accumulated ordinary income to New York beneficiaries before June 1, 2014.

Concluding Reflection

The challenge facing us is that we do not know whether the proposal will be enacted, or if it is enacted, whether it will be amended. Because of this uncertainty, if you believe you may be affected by the proposal, we encourage you to contact us immediately to put a plan in place. ♦

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