

One Minute Memo[®]



New Proposals Present Planning Opportunity For NY Residents

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Governor Cuomo's 2014-2015 Executive Budget contains a number of estate tax proposals aimed at decreasing the New York State estate tax burden and reducing the incentive for people to move out of New York to avoid its onerous estate tax.

Specifically, the Executive Budget contains the following proposed changes:

- **Increasing the Exclusion Amount** - Currently, New York has a \$1 million exclusion from estate taxes.¹ Under the proposal, the estate tax exclusion will increase each year until reaching \$5.25 million for individuals dying on or after April 1, 2017. For individuals dying on or after April 1, 2019, the exclusion amount will be indexed for inflation and should match the Federal estate tax exclusion amount.
- **Decreasing the Estate Tax Rates** - Currently, New York has a maximum estate tax rate of 16%. Under the proposal, the top tax rate will decrease gradually until settling at a maximum rate of 10% for individuals dying on or after April 1, 2017.
- **Subjecting taxable gifts made after April 1, 2014 to New York estate tax** - Currently, New York has no gift tax, and lifetime gifts are not included in the determination of the donor's New York estate tax liability. Thus, it is currently possible for an individual to make substantial gifts without ever incurring New York gift tax or estate tax on the gifted property. Under the proposal, however, gifts made after April 1, 2014 would be added back to a donor's gross estate and potentially subjected to New York estate tax at the donor's death.² (There is no proposal to impose a New York gift tax on lifetime gifts.)

When do these changes go into effect?

As proposed, these estate tax changes will become effective on April 1, 2014. However, these are **proposed** changes and we currently do not know which, or to what extent any, of these proposals will become law.

¹ For reference, the Federal estate tax exclusion amount for 2014 is \$5.34 million and is subject to an annual inflation adjustment beginning on January 1 of each year.

² For reference, this proposal is similar to the Federal estate tax treatment of lifetime gifts whereby such gifts are included in the determination of an individual's estate tax liability.

Is there any planning that I can do now?

New York residents who have not yet made lifetime gifts of \$5.34 million (or \$10.68 million per couple) should consider making gifts up to that amount prior to April 1, 2014. If the proposals become law, gifts made prior to April 1 will avoid New York estate tax. Even if the proposals do not become law, these gifts will not incur Federal gift tax and any appreciation on the gifted assets is removed from the donor's estate for Federal estate tax purposes.

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