



NEW YORK ESTATE TAX CHANGES EFFECTIVE APRIL 1, 2014

New York has made significant changes to its estate tax law. The most significant change is that the estate tax exemption has increased for New Yorkers dying on or after April 1, 2014. The estate tax exemption amount has increased from \$1,000,000 to \$2,062,500 per person, with annual increases through 2018, and thereafter matching the federal estate tax exemption (see chart below). However, the exemption quickly phases out for estates over the exemption amount, and is eliminated entirely if the estate is more than 5% over the exemption (referred to as a “cliff”). Estates more than 5% over the exemption amount will pay the same amount of tax as before the change in the law, with tax rates up to 16% for estates exceeding around \$10,000,000. The exemption amount is as follows for New Yorkers dying during the time period below:

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
January 1, 2019 and thereafter:	same as federal exemption (with inflation adjustments, projected to be around \$5,900,000 in 2019).

New Yorkers whose estates are within 5% over the exemption amount may wish to include a bequest in their Will to a charity to reduce their taxable estate since the bequest would be less than the New York estate tax imposed without the bequest. For example, for a New Yorker who dies in 2014 with an estate of \$2,165,625, the New York estate tax would be \$112,050. If, on the other hand, he makes a charitable bequest of \$103,125, there will be no New York estate tax. (Note that we could draft this using a formula based on the exemption at the time of death.) This type of bequest might be included in the Will of a single person or a married person in the event the spouse predeceases.

Another significant change is that federal taxable gifts will be added to the New York taxable estate if made within three years of death and if made between April 1, 2014 and December 31, 2018 (gifts within the annual exclusion amount or made for tuition or medical expenses are not added back). The add back, however, does not appear to exclude gifts of real or tangible personal property outside of New York State,

which, if owned at a decedent's death, would not be subject to New York's estate tax. If one is moving into or out of New York, the timing of making gifts must also be considered since gifts are added back only if made when the taxpayer was a New York resident. Furthermore, because the New York estate tax will be imposed on gifts that are no longer held in the estate, it is important to consider which estate assets would be the best source against which to allocate the New York estate tax due on such gifted assets. In addition, New York estate taxes paid on gifts added back will not be deductible for federal estate tax purposes in contrast with the deductibility of New York estate tax on assets owned at death. Since the federal estate tax is a flat 40% for estates which exceed the federal exemption, the deduction is worth 40% of the New York estate tax paid.

Unfortunately, a decedent's unused New York estate tax exemption cannot be passed to the surviving spouse through portability, as is the case with the federal estate tax exemption. As a result, New Yorkers should continue to use credit shelter trusts as part of their estate planning. In addition, married couples whose combined estates are less than twice the exemption amount should try to divide their assets so that each spouse can have enough assets in his or her name to take advantage of the exemption. For example, if wife predeceases husband and wife has no assets, and if husband dies in May, 2015 with \$3,600,000 million of assets, husband's estate will be subject to New York estate tax of \$238,800. If their assets had been split evenly and wife had set up a credit shelter trust for husband, no New York estate tax would have been payable on either spouse's death.

We recommend that you review your current estate plan to see if it reflects your wishes in light of the estate tax changes. For example, if your estate plan leaves the amount passing free of New York and federal estate tax to a credit shelter trust (or to your children) and the balance outright to your spouse, the amount passing to that trust (or to your children) will increase each year (instead of being limited to \$1,000,000 under prior law). Depending on the size of your estate, you might wish to cap the amount passing to that trust or to your children or have a disclaimer trust instead (which allows the surviving spouse to decide how much passes to the trust). For another example, if your estate plan includes a credit shelter "spray" trust for the benefit of your spouse and children which holds the full federal exemption and you die prior to 2019, your estate will pay the same amount of New York estate tax that would have been payable before the change in the law increasing the New York exemption. To avoid estate tax on the first spouse's death, the amount in the credit shelter trust should be limited to the amount which passes free of New York and federal estate tax, and the balance of your estate can pass outright to your spouse or be held in a trust which qualifies for the marital deduction (taxable at the surviving spouse's death, subject to any exemption available).

As a result of the change in the New York law, estate planning for New Yorkers must still look to credit shelter trusts to achieve estate planning goals and must consider the difference between the New York and federal exemptions. In addition, New Yorkers should consider the risks of making large gifts prior to 2019. We would be happy to assist you if you wish to make changes to your estate plan or if you wish us to review your plan to see if it makes sense for you in light of the new law.

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