

# One Minute Memo<sup>®</sup>



## New York Estate Tax Changes

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New York recently enacted a number of changes to its estate tax law. While the original purpose of these changes was to decrease New York estate taxes and thereby reduce the incentive for high net worth residents to leave New York, the changes, as enacted, lessen the New York estate tax burden for some - *but not all* - residents. In fact, the changes may actually *increase* the estate tax burden on some of New York's high net worth residents. Specifically, the new law provides:

- **Increased Exclusion Amount** - Effective April 1, 2014, New York's estate tax exclusion more than doubled from \$1,000,000 to \$2,062,500. The exclusion will continue to rise to \$3,125,000 on 4/1/15; \$4,187,500 on 4/1/16; and \$5,250,000 on 4/1/17. Beginning January 1, 2019, the exclusion amount will be indexed for inflation and should match the Federal estate tax exclusion amount (currently \$5,340,000, also indexed for inflation).
- **No Change to the Maximum Estate Tax Rate** - New York's maximum estate tax rate (for estates over \$10.1 million) is currently 16%. This is the same maximum rate as existed under prior law, and proposals to decrease the maximum rate were not enacted.
- **Some Taxable Gifts are subject to New York Estate Tax** - Currently, New York has no gift tax. Under prior law, individuals could make substantial gifts without ever incurring New York gift tax or estate tax on the gifted property. Under the new law, however, any lifetime gift made (i) within 3 years of death, (ii) on or after April 1, 2014 and (iii) before January 1, 2019, will be subject to New York estate tax in the estate of a New York domiciliary.
- **The Estate Tax "Cliff" may eliminate the benefit of the Increased Exclusion Amount** - The benefit of the exclusion amount is eliminated for estates exceeding the exclusion amount by more than 5%. This means that if an individual dies after April 1, 2014 and before April 1, 2015, with an estate that exceeds \$2,165,625 in value, it will be completely taxable for New York estate tax purposes, i.e., no exclusion applies.

### What is the effect of these changes?

The new estate tax provisions benefit individuals who die with assets that do not exceed the value of the applicable exclusion amount by 5% and who have not made large taxable gifts within 3 years of death. Married couples may benefit from the ability to make larger bequests to beneficiaries other than the spouse or to certain trusts for the spouse's benefit, that do not exceed the applicable New York exclusion amount.

For individuals who die with assets that exceed the value of the exclusion amount by more than 5%, the new estate tax law provides no benefit. Further, because certain lifetime gifts are now subject to New York estate tax, the estates of individuals making such gifts may have a higher estate tax liability than under prior law.

## What estate planning can I do?

Consider the following:

- **Spouses should Equalize their Estates** - Married couples owning combined assets valued in excess of one New York estate tax exclusion should make efforts to equalize their estates. This will make it less likely that the New York estate tax exclusion of the first spouse to die will be wasted. Unlike Federal estate tax law, which provides for “portability” of a spouse’s exclusion (i.e., the surviving spouse may use any unused portion of the exclusion of the first spouse to die), New York does not provide for portability.
- **Flexible Estate Plans** - In light of increasing estate tax exclusions and uncertain estate tax at death, estate planning documents should be drafted to be flexible and allow for *post-mortem* (after-death) estate planning.
- **Change of Domicile** - New York is one of only 16 states imposing a state estate tax and it is tied for imposing the 3rd highest maximum estate tax rate. States such as Florida, California, New Hampshire and Arizona impose no state estate tax. While estate taxes should not be the sole reason for changing one’s domicile, it may be a factor to consider.

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