



### Changes to New York Estate and Gift Taxes: Will They Affect You?

Syracuse, New York

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Effective **April 1, 2014**, New York's rules have changed for estate and gift tax. We have summarized the changes and their potential impact on your estate plan.

**Estate Tax:** Starting this year the New York estate tax exemption will increase each year until 2019, after which it will equal the Federal exemption. Estates valued at less than 100% of the exemption will pay no estate tax. Estates valued between 100% and 105% of the exemption will pay tax on the value that exceeds the exemption amount. In other words, the tax benefits from the exemption are "phased out" as an estate's value approaches 105% of the exemption. Estates valued at greater than 105% of the exemption pay full tax on the entire estate. The top estate tax rate in New York continues to be 16%.

#### New York's Increasing Estate Tax Exemption

For people dying . . .	the NY Estate Tax exemption is . . .	Full tax on entire estate (exemption "phased out") if estate value is greater than
April 1, 2014 – March 31, 2015	\$2,062,500	\$2,165,625
April 1, 2015 – March 31, 2016	\$3,125,000	\$3,281,250
April 1, 2016 – March 31, 2017	\$4,187,500	\$4,396,875
April 1, 2017 – December 31, 2018	\$5,250,000	\$5,512,500
January 1, 2019 and beyond	equal to federal exemption	105% of federal exemption

These changes mean different things for different estates. On the one hand, decedents with estates valued at less than the exemption will pay no estate tax. This means that more estates will avoid estate tax as the exemption rises. For example, assume someone passed away on April 1, 2014 with a New York taxable estate of \$2 million. Under the old exemption threshold of \$1 million, the entire estate would have been taxed. However, under the new exemption for 2014-2015, the \$2 million estate pays no estate tax.

On the other hand, larger estates will continue to be taxed as they have been in the past. For example, assume someone passed away on April 1, 2014 with a New York taxable estate of \$10 million. This estate is not exempt from estate tax because its value exceeds \$2,165,625, or 105% of the 2014-15 exemption.

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## Estates &amp; Trusts Practice Group Alert

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In the middle, estates valued between 100% and 105% of the exemption will face some interesting challenges and opportunities. Assume someone passed away on April 1, 2014 with a New York taxable estate of \$2,135,000. Because the estate is valued between the exemption and a full "phase out," it will owe \$88,675 in New York estate tax. It is possible to eliminate this tax and increase the amount passing to heirs by bequeathing enough money to charity to reduce the taxable estate to an amount below the full "phase out" amount. This strategy gives the decedent control over the dollars that would have been paid in estate tax. For a \$2,135,000 estate, a testamentary gift to charity of \$72,500 eliminates all New York estate tax and increases by \$16,175 the amount passing to heirs.

**Gift Tax:** Under the new rules, gifts made in excess of \$14,000 per recipient per year may now be included in the taxable value of the donor's estate. In order to be included, the gifts must have been made: (1) within three years of the donor's death; (2) when the donor was a New York resident; (3) on a date between April 1, 2014 and January 1, 2019. There are some exceptions so that federally-taxable gifts are not taxed twice.

**No Portability:** Federal law allows a surviving spouse to use any unused estate tax exemption from his or her deceased spouse. New York, however, does not allow spouses to use the deceased spouse's exemption. As a result, traditional estate tax planning utilizing trusts will be needed for married New Yorkers whose gross estates are in excess of the new estate tax exemptions.

**For more information and to discuss how these laws impact your estate planning needs, please contact any member of our Estates & Trusts Practice Group:**

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### Bousquet Holstein Estates & Trusts Practice Group

Our estate planning services include the preparation of wills, health care proxies, living wills, durable powers of attorney and living revocable and irrevocable trusts, including Medicaid trusts, life insurance trusts, asset protection, charitable trusts, grantor retained annuity trusts and qualified personal residence trusts. Our tax planning services include the use of these planning devices to assist our clients in reducing the tax burdens on their estates. Our attorneys and paralegals also handle all aspects of administering wills and trusts, including the probate of wills, the marshaling and inventory of assets, the preparation and filing of estate tax returns and fiduciary income tax returns and the establishment and implementation of investment and distribution policies for trusts and estates. We represent beneficiaries and fiduciaries in contested trust and estate matters in all appropriate forums including state and federal courts. We also provide trust management services to individual trustees, including attorneys of the firm who are acting as trustees.