

COOPERMAN LESTER MILLER CARUS LLP

ATTORNEYS-AT-LAW

1129 NORTHERN BOULEVARD • MANHASSET, NY 11030

(516) 365-1400

FAX: (516) 365-1404

www.clmclaw.com

ASHER H. MILLER

Direct Dial: 516-365-1400, Ext. 112

e-mail address: amiller@clmclaw.com

NEW YORK CITY OFFICE
767 THIRD AVENUE
NEW YORK, NY 10017
(212) 688-7000
FAX: (212) 371-7634

HOW THE CHANGES TO THE NEW YORK ESTATE TAX LAWS MAY AFFECT YOU

New York State enacted legislation in 2014 which significantly impacts New York's taxation of trusts and estates. While the changes provide tax relief for many New Yorkers, they may adversely impact those with substantial wealth.

New York Estate Tax Exemption

The New York estate tax exemption amount, which was previously \$1,000,000 per person, is increasing progressively. On and after January 1, 2019, the New York estate tax exemption will match the federal estate tax exemption. The top New York estate tax rate remains at 16%.

Surprisingly, not every New York estate will benefit from the increased exemption amounts as (i) the benefit of the exemption is phased out for taxable estates between 100% and 105% of the exemption, and (ii) taxable estates of 105% or more of the exemption completely lose the benefit of the exemption.

The following chart reflects the increased exemption amounts, and the dollar amount at which it is completed phased out:

Date of Death	New York Exemption	Phaseout of Exemption
April 1, 2015 to March 31, 2016	\$3,125,500	\$3,281,250
April 1, 2016 to March 31, 2017	\$4,187,500	\$4,396,875
April 1, 2017 to December 31, 2018	\$5,250,000	\$5,512,500
January 1, 2019 and thereafter	Match the federal estate tax exemption (currently \$5,430,000, as indexed for inflation)	105% of federal exemption

The impact of exceeding 105% of the exemption amount can have substantial effect. Assuming a basic exclusion amount of \$5,250,000, a decedent with a New York taxable estate of \$5,512,500 (which is 105% of the basic exclusion amount of \$ 5,250,000) would pay New York estate tax of \$430,050. In effect, there is a New York estate tax of \$430,050 (or a marginal New York estate tax rate of nearly 164%) on the additional New York taxable estate of \$262,500 in excess of the basic exclusion amount of \$5,250,000.

Since New York does not allow for “portability” (i.e., the surviving spouse may not use the deceased spouse’s unused New York estate tax exemption) the titling of assets between married couples takes on greater significance. To illustrate how titling can affect your estate taxes, consider the case of John and Jill. John owns \$6,250,000 in assets in his name, while John’s wife, Jill, does not have any assets in her name. John dies on September 1, 2015, and bequeaths an amount up to the New York exemption amount (\$3,125,000) to a credit shelter trust for Jill’s benefit. The remainder of John’s estate (\$3,125,000) passes to Jill outright. There is no New York estate tax in either estate in this scenario as both estates are able to utilize the New York exemption to completely shelter all of the assets. If, however, all of the assets were in Jill’s name, and she died later in 2015, after John, there would be a New York estate tax of \$542,000 upon her death. This result could have been completely avoided with advance planning.

New York Look Back for Lifetime Gifts

Previously, lifetime gifts were not included in the calculations used to determine a New York decedent’s taxable estate. Under the 2014 law, gifts made within three years of death will be added back to the value of the estate for purposes of the New York estate tax. The add-back could potentially increase an estate’s tax liability, especially if the estate is close to exceeding 105% of the New York exemption amount. Despite the new law, lifetime gifting provides certain tax benefits. Gifted property will avoid New York estate tax (if the donor survives three years), will remove any appreciation from the estate and may further serve to reduce the estate tax if the gift lowers the estate to under 105% of the New York exemption amount.

Revisiting Existing Trusts

Clients who are trustees or beneficiaries of existing trusts which were created for tax reasons should review those trusts to determine whether they remain beneficial under the new tax laws and, if not, if they can be terminated.

Next Steps

Given the significant changes to New York estate, gift and income tax laws, some of which are summarized above, please contact me to schedule an appointment to review how you can minimize your tax liability.