

Anchin Alert

Anchin, Block & Anchin LLP
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New York State Gift, Estate and Trust Law Changes

New York State recently enacted some significant tax law changes. Contained within the new budget are critical gift, estate and trust topics that should be addressed immediately by New York residents as well as beneficiaries of exempt resident trusts.

Gift Tax Changes

Prior to the recently adopted law, NYS gift tax was non-existent, as the tax was repealed in 2000. While the gift tax has not been revived, there will be significant changes starting April 1, 2014. On this date and through December 31, 2018, taxable gifts made within three years of death by New York State residents will be added back to their Gross Estate upon filing the NYS Estate Tax Return.

GST Tax Changes

New York enacted the Generation Skipping Transfer Tax into law in 1999. Since then, it has been a minor source of revenue as the scope of the tax was limited to taxable distributions and taxable terminations upon death compared with the Federal GST tax. New York State has decided to repeal the GST tax entirely.

Estate Tax Changes

New York States' estate tax exemption will be consistent with the federal exemption. The increased exemption will be phased in over a five year period when parity begins after January 1, 2019. The exemption will be phased out completely when the gross estate reaches 105% of the applicable exemption amount for the year. This creates a sharp cliff which eliminates the benefit of the exemption very quickly. So while this exemption will help the moderately wealthy, it will not help individuals with larger estates. The maximum rate of 16% will remain unchanged. New York State will not permit portability between spouses.

Example: Let's assume an individual passes away on May 1, 2016. The applicable New York State exemption at this time will be \$4,187,500. Let's also assume that this individual has a gross estate of \$4,396,875, which happens to be equal to 105% of the exemption. The difference between the gross estate and the applicable exemption of \$209,375 generates a tax owed of \$324,050. The additional taxable estate of \$209,375 creates a marginal tax rate over 150%. If the gross estate was equal to the exemption amount of \$4,187,500 no tax would be due.

Trust Law Changes

Under prior law, exempt New York State resident trusts paid no New York State income tax if:

- All trustees are outside New York State
- All real and tangible property is located outside New York State, and
- All income and gain is derived from sources outside New York State

The new law taxes distributions of accumulated income from tax years beginning on or after January 1, 2014. The tax is paid by the beneficiary receiving the distribution. Trustees should consider making distributions from accumulated income prior to June 1st to escape the tax. Distributed income accumulated prior to the beneficiary's birth or turning 21 years of age will not be subject to this tax.

The new law also makes changes to Incomplete Gift Nongrantor Trusts and their taxability. These trusts are treated as separate entities for federal income tax purposes. However, New York State will treat these trusts as grantor-type for income tax purposes. Income earned by the trust will be taxed to the grantors. Although the tax was retroactively effective as of January 1, 2014, income earned in calendar year 2014 prior to June 1st will not be taxed to the grantor if the trust is liquidated on or before that date.

For more information regarding the changes to New York State Law, please contact your Anchin Relationship Partner at 212.840.3456.



Anchin, Block & Anchin LLP
Accountants and Advisors
212.840.3456 • www.anchin.com

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