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TRUSTS & ESTATES LAW ALERT

Estate Tax Changes Under New York's 2014 Budget Bill

On March 31, 2014 Governor Cuomo signed into law the 2014-2015 Budget, bringing extensive revisions to the outdated New York law relating to the taxation of estates. Under the new laws, fewer New Yorkers will be subject to estate taxation at death.

The American Taxpayer Relief Act of 2012 (ATRA), signed by President Obama on January 2, 2013, made permanent a higher federal exclusion of \$5,000,000 indexed for inflation. The revised New York estate tax laws are designed to bring the state's exclusion to the federal level over the next four years.

For decedents dying on or after April 1, 2014, the New York estate tax exclusion has been raised from \$1 million to \$2,062,500 and will continue to increase until January 1, 2019, when it will be in line with the federal amount. The top estate tax rate will remain at 16%. Below is a summary of where the New York estate tax exclusion amount is headed:

NEW YORK ESTATE TAX EXCLUSION AMOUNT

Through March 31, 2013	April 1, 2014 – March 31, 2015	April 1, 2015 – March 31, 2016	April 1, 2016 – March 31, 2017	April 1, 2017 – December 31, 2018
\$1,000,000	\$2,062,500	\$3,125,000	\$4,187,500	\$5,250,000

Beginning January 1, 2019, the basic exclusion amount (projected to be \$5.9 million) will include a cost-of-living adjustment.

While the increased exclusion will allow more New Yorkers to pass property to the next generation free of estate tax, be forewarned. The new tax laws have a trap into which, without proper planning, many clients may fall.

To illustrate, assume a New York resident dies on May 15, 2014 with an estate of \$2,062,500. No estate tax is owed, as the estate equals the applicable exclusion amount. If, however, the estate is more than 5% above the new exclusion amount, the decedent's entire estate is taxed, not just the amount over the exclusion. For example, if the decedent dies with 6% over the exclusion, his estate of \$2,186,250 will generate a New York estate tax bill of over \$100,000.

Notably, the new tax law does not adopt the popular federal estate tax concept of portability, which allows the unused estate tax exclusion amounts of a deceased spouse to be carried forward and utilized by the surviving spouse.

The new law also includes a gift add-back requirement that could increase the tax due at death. During the phase in period of the new law from April 1, 2014 through December 31, 2018, the value of gifts made by a New York resident within three years of death will be added back into the estate to calculate the New York estate tax.

Efforts are ongoing to promote revisions to the new laws to, among other things, eliminate the dangerous trap explained above. It remains to be seen whether these changes will slow the flight of snowbirds - New Yorkers who move out of state to avoid New York tax.

Estate and tax planning with built in flexibility are key to navigating the ever-changing sea of federal and New York tax laws. Our team of Trusts & Estates Practice attorneys are ready, and we look forward to reviewing your current estate plan to ensure that your goals are still met in the face of the changes brought about by the new laws.

If you have any questions or would like more information on the issues discussed in this communication, please contact any of the following Hancock Estabrook attorneys:

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