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Changes to New York State Estate and Gift Tax Regimes

On March 31, 2014, Governor Andrew Cuomo signed legislation that significantly alters the New York State estate and gift tax laws - the first change since 1998. Under the old law, an estate was subject to NYS estate tax if the total gross estate exceeded \$1,000,000. Under federal law, an estate is subject to estate tax if the total gross estate, plus the federal adjusted taxable gifts, exceeds \$5,340,000 ("exemption amount"), indexed for inflation. Thus, for NYS residents whose gross estates exceeded \$1,000,000 but were less than \$5,340,000, NYS estate tax was payable on the sum between \$1,000,000 and the federal exemption amount. Governor Cuomo's legislation provides for an incremental increase of the NYS exemption amount that will eventually match the federal exemption amount. These changes were made to encourage wealthy New Yorkers to stay in New York rather than retiring to more tax-favorable jurisdictions.

CONTINUED ON PAGE 3

Spring Cleaning – Time To Review and Renew

Tax season is over! Spring has sprung! It's time to "review and renew." Each spring, we at Berwitz & DiTata LLP encourage our clients, friends and "would be" friends to focus on estate planning, refresh those resolutions and stop procrastinating. We call it our annual "Review and Renew" program.

If you have never created an estate plan, now is the time. Although estate planning is rarely a topic people look forward to addressing, we are dedicated to helping clients identify and implement



their estate planning objectives with ease and efficiency. We believe that our success is founded on this fundamental commitment to communicate with our clients in a

CONTINUED ON PAGE 2

What Is Includable In Your Estate?

Most of us have heard the expression: "Nothing is certain in life but death and taxes." For some of us, taxes may be owed even after death. Depending on the size of your estate, estate taxes, state and/or federal, may be due. To determine your potential estate tax liability, it is important to understand the assets that are considered part of your estate.

- **Real Property.** Any real property that you own, regardless of where in the world it is located, including your residence, vacation home, rental property, or condominium, is included in your gross estate. If your property is held solely in your name or in the name of your living trust, the full value will be

included in your gross estate. If your deed provides that you and your spouse own the property with right of survivorship, and you die first, only one-half (1/2) of the value of the real property will be included in your gross estate. If you own the property with anyone other than a spouse with right of survivorship, the entire value of the property will be included in

CONTINUED ON PAGE 2

IN THIS ISSUE:

Changes to New York State
Estate and Gift Tax Regimes

Spring Cleaning –
Time To Review and Renew

What Is Includable
In Your Estate?

What Is Includable In Your Estate?

CONTINUED FROM PAGE 1

your gross estate unless it can be demonstrated that the other owner contributed to the purchase of the property. If the property is owned with another as tenants-in-common, only your proportionate interest in the property will be included in your gross estate.

- **Personal Property.** Any jewelry, furniture, artwork, clothing, collectibles and electronics that you own upon your death will be included in calculating the value of your gross estate.
- **Vehicles.** Any cars, boats, or other vehicles that you own will be included in your gross estate. If the vehicle is titled in your name or in the name of your living trust, the full value as of your date of death will be included in your gross estate. If you own the vehicle jointly with your spouse, one-half (1/2) of the value will be included and, if it is owned jointly with someone other than your spouse, the entire value will be included unless it can be proven that the other owner contributed to the purchase of the vehicle.
- **Bank Accounts.** Checking accounts, savings accounts, money markets, and certificates of deposit are included in your gross estate. The same rules described above with respect to ownership and title of real property also apply to ownership and title of bank accounts.
- **Stocks and Bonds.** Stocks and bonds of any kind, whether issued by domestic or foreign corporations or governments, are includable in your gross estate.
- **Life Insurance.** Many people are surprised to learn that life insurance proceeds on their own lives ARE typically included in calculating their gross estate, even if they are payable to named beneficiaries. This is because, at the time of death, the insured person paid the premiums and retained incidents of ownership such as the right to cancel the policy, the power to change beneficiaries, and the ability to pledge the policy as security for a loan. However, the value of a life insurance policy can be removed

from your estate with appropriate planning – even after the policy is purchased.

- **Business Interests.** The value of an interest in any business that you own at death, whether as a proprietor, a partner or corporate shareholder is includable in your gross estate.
- **Rights to Future Income.** The right to payments under a deferred compensation agreement or partnership income continuation plan may be includable in your estate. These rights are known as “income in respect of a decedent” and may be includable at their present commuted value.

These are examples of the interests that may be includable in your gross estate but the list is not exhaustive. The determination of what else will be included in your estate requires individual analysis. Certain estate planning documents, coupled with adjustments to property ownership arrangements, can help minimize estate taxes. It is advisable to have your estate plan reevaluated from time to time to help protect your beneficiaries and heirs from the burden of meeting estate tax requirements.

Spring Cleaning - Time To Review and Renew

CONTINUED FROM PAGE 1

caring and responsive manner. Those who have met with us in a one-on-one consultation know that we believe that everyone can benefit from estate planning regardless of personal income or net worth. Everyone has concerns regarding the future. For instance: How can I avoid probate or the dissipation of my assets to estate

taxes? How can I avoid losing control of my assets if I become disabled? How do I protect myself and my family from devastating nursing home costs? Can assets still be protected if a loved one is already in a nursing home? How can I protect my minor children? How can I protect my disabled child or the assets that he or she may one day

inherit? In designing strategies to effectuate our clients' goals, we offer detailed advice and a high level of technical expertise. Now is the time to achieve estate planning peace of mind! Ask those questions, explore the options, get it done.

If you created your estate plan, or reviewed it last, more than 3 years ago – now is the time. Are your documents up to date? Have

CONTINUED ON PAGE 4

Changes to New York State Estate and Gift Tax Regimes

CONTINUED FROM PAGE 1

So how does the new law work?

Before April 1, 2014, the amount that an individual could leave to his or her heirs without paying NYS estate tax was \$1,000,000. As of April 1, 2014, the exemption amount is increased to \$2,062,500 for those who pass away between April 1, 2014 and March 31, 2015. For those who pass away between April 1, 2015 and March 31, 2016, the exemption increases to \$3,125,000. The following year, the amount increases to \$4,187,500. For those who pass away on or after April 1, 2017 but before January 1, 2019, the exemption amount is \$5,250,000. After January 1, 2019, the NYS exemption amount is scheduled to equal the federal estate tax exemption. The top NYS estate tax will remain 16%.

Watch out for the “Cliff”

For many New Yorkers, this increase in the exemption amount will offer significant estate tax savings. However, there are additional intricacies in the new law that are problematic. The legislation provides that the new NYS exemption amount is “phased out” for taxable estates valued at between 100% and 105% of the exemption amount. This means that if you die with an estate valued at just five percent (5%) more than the exemption amount, you face a “cliff” and will be taxed on the full value of your estate, not just the amount exceeding the exemption amount.

For example, a New Yorker passes away on June 1, 2014 with an estate valued at \$2,200,000. The NYS exemption amount will be \$2,062,500. Because the value of the estate exceeds 105% of the exemption amount ($\$2,062,500 \times 105\% = \$2,165,625$), the estate is subject to NYS estate tax on the entire \$2,200,000. Due to changes in the tax bracket structure, the estate tax owed will be \$114,800, the same amount that would have been owed under the old law. However, if that New Yorker had died with an estate valued at \$2,000,000, the estate would owe no NYS estate tax under the new law. Under the old law, a \$2,000,000 estate would have owed \$99,600 in NYS estate tax.

The effects of the estate tax “cliff” are even more dramatic when one considers its impact on larger estates. Let’s assume a New Yorker dies on June 1, 2017 with a taxable estate of \$5,600,000. The exemption amount will have increased to \$5,250,000. Because the value of the estate exceeds 105% of the exemption amount ($\$5,250,000 \times 105\% = \$5,512,500$), the estate will be subject to NYS estate tax on the entire estate. The NYS estate tax owed will be \$462,800. If the estate’s value had been decreased by just \$350,000 (the difference between the exemption amount and the value of the estate), there would have been no NYS estate tax.

Gift Add-Back

As you read the second example, you may have thought, “Why not just give away \$350,000 if it will save \$462,800 in NYS taxes?” The new law contains a provision that is designed to close this loophole. NYS currently has no gift tax. Under the old law, gifts made during lifetime were not



included by NYS in the calculation of the gross estate. However, the new law provides that gifts made within 3 years of death will be added back for purposes of calculating the gross estate. This add-back applies only to gifts made on or after April 1, 2014 and before January 1, 2019. If an individual attempts to decrease the value of his estate by gifting, to save on NYS estate taxes, and dies within 3 years of the gift, the gift is included for purposes of calculating his gross estate.

Conclusion

The new law is complicated and already rumors abound as to whether the legislature will revisit these changes. Those of our readers who have taxable estates must know that there are estate planning tools that can be utilized to reduce or even eliminate estate taxes. If you are interested in learning about them, or if you have questions as to how the new laws might affect your existing estate plan, please contact us to arrange for a consultation.

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Spring Cleaning – Time To Review and Renew

CONTINUED FROM PAGE 2

there been changes in the law or in your life that should now be considered? The documents that address the needs of a single person are frequently insufficient when he or she marries. If a couple has children, the appointment of a guardian should be a key factor in estate planning. Those documents that were created when the kids were small may no longer reflect their parents' wishes now that the kids have grown and flown. Indeed, once your child reaches the age of 18, he or she should have a valid and enforceable Health Care

Proxy empowering you or another to make health care decisions. The "sandwich generation" is discovering that the joy and responsibility of raising children is all too frequently overshadowed by the illness of parents. The need for estate planning takes on new meaning as one approaches retirement and, if illness threatens, timing becomes more critical. Lifetime changes affect estate planning. Even if you can't conceive that the changes in your life may have an impact on your estate planning documents, an estate planning review is a vital element to ensuring that your wishes will be accomplished.

Because Berwitz & DiTata LLP understands the importance of keeping the plan current, we offer our clients a unique value-added

component: a complimentary three-year review. For those who have not yet retained our services, there is a nominal fee to review your plan. Let us help you realize your estate planning objectives.

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